



803:Doing Business in China

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Faculty Biographies

William J. Calore

William J. Calore is assistant general counsel for Reichhold, Inc. a subsidiary of Dainippon Ink & Chemical. Reichhold is located in the Research Triangle Park, North Carolina. His responsibilities include providing legal counsel to the organization with particular emphasis on international legal matters, mergers & acquisitions, antitrust/competition, and intellectual property matters.

Prior to joining Reichhold, Mr. Calore was vice-president and general counsel for Atlas Copco North America Inc. in New Jersey, where he was responsible for all legal matters for the US Subsidiary of Atlas Copco, a Swedish Multinational. Before that, he was general counsel for Volvo Penta of the Americas Inc., in Chesapeake, Virginia, where he spent one year on an overseas assignment in Goteborg, Sweden. Mr. Calore began his legal career as an associate with Porter, Wright Morris and Arthur, in Columbus, Ohio.

In addition to his legal responsibilities, Mr. Calore is chair of Reichhold's Chinese Joint Venture, which is located in Beijing, China.

Mr. Calore received his BA from Holy Cross, and graduated *cum laude* from Washington & Lee University School of Law.

Catherine Sun

Catherine Sun is the general counsel of Crimson Pharmaceutical (Hong Kong) Ltd., a privately held biopharmaceutical company focused on developing and commercialising novel therapeutics in the Asia Pacific region with operations in Hong Kong, Mainland China, and the United States. Her responsibilities include providing all aspects of intellectual property and commercial legal advice to the management. As an experienced intellectual property attorney admitted in both China and the U.S., Ms. Sun also acted as an outside general counsel for several technology companies in China, such as leading software company Chinese Star Cyber Technology Ltd.

Prior to this position, Ms. Sun was an attorney with Pillsbury Winthrop, LLP in the Washington, DC/Northern Virginia office. She practiced in the areas of intellectual property litigation, licensing, and international trade commission matters. She served as an in house counsel for a New Jersey based telecommunication firm and a judicial extern at the Court of Appeals for the Federal Circuit with Honourable Judge Rader in mid-1990s. Prior to this, Ms. Sun practiced IP laws in Beijing.

Ms. Sun is the cochair of a two-day conference entitled "Doing Business in China" sponsored by CLE International. The next conference will be held in San Francisco or Shanghai in Spring 2004.

Ms. Sun received a Bachelor of Law from Peking University, and is a graduate from the George Washington University law school.

Gregory C. Wajnowski

Gregory C. Wajnowski is special counsel-Asia for the power systems division of the General Electric Company. His responsibilities include advising the power systems division on a wide range of legal matters in Asian jurisdictions. Recently, he has been particularly active in supporting a number of acquisition and joint venture initiatives in China.

Prior to joining the power systems division, Mr. Wajnowski served as Asia regional counsel for GE Lighting. Before joining GE, Mr. Wajnowski was a partner at Thelen, Marrin, Johnson & Bridges (now Thelen, Reid & Priest).

Mr. Wajnowski received his undergraduate degree from Dartmouth College and is a graduate of the Columbia University School of Law. He has also studied in Taiwan and in the People's Republic of China.

Usha Wright

Usha Wright is vice president and associate general counsel, director environment safety, and health (ESH) at ITT Industries, Inc., a multi-national diversified manufacturing company. ITT Industries, Inc. supplies advanced technology products and services in key markets including electronic interconnects and switches, defense communication, opto-electronics, information technology, and services, fluid and water management, and other specialty products. Ms. Wright heads both the legal and business ESH functions. As an officer of the corporation, Ms. Wright chairs the company's global ESH committee, and sets policies pertaining to the company's environmental compliance, and improvement, and employee health and safety issues.

Prior to joining ITT Industries, Ms. Wright was executive director of health, safety, and environment at Ciba Geigy, a Swiss corporation.

She currently serves on the board of the National Association of Environmental Managers (NAEM). She was on the board of directors of Certified Safety Professionals and the American Industrial Hygiene Association. Ms. Wright is also an adjunct professor of the faculty at Rutgers University School of Law.

She has a masters from the Department of Environmental Sciences and Engineering at the University of North Carolina, and is a graduate of Rutgers University School of Law, where she was an editor of *Rutgers Law Review*.

William J. Calore
Vice-President & General Counsel
Ulysses Chemical Corporation

Sample Questions to ask before doing business China

Step One: Going to China: What will be the protocol for holding meetings and conducting business in China.

- i) How will this Chinese company approach joint ventures and/or negotiations of this sort?
 - ii) What will be their mindset coming into these meetings (how will they view us)?
 - iii) Will they bring lawyers with them? What if we bring our lawyers? How will they perceive our lawyers and their roles at these negotiations?
 - iv) What can we expect to get accomplished in our first meeting?
 - v) What are some of the things we should we expect to see?
 - vi) How much time should we allocate for such meetings? Who should be in the meetings?
 - vii) Who will be the real decision maker in a Chinese company? Will the President have the authority to sign a deal, or does it require 'board' approval?
 - viii) What will our erstwhile Chinese partner want out of this deal?
 - Money? Technology?
 - Trading partners?
 - Markets?
 - What are they willing to give in exchange?
 - Can you rely on them to keep their word?
 - ix) Will we be allowed to conduct a full due diligence on the company?
 - How much cooperation can we expect from the Chinese company?
 - How much time should we allocate?
 - Who should be involved in the process?
 - x) What can I do to protect my Intellectual Property rights?
- b) Step 2: Consideration of legal questions that may come up during the course of the discussions – including questions regarding the Chinese Government approval process, and the form of business organization one can use:
- i) How does one actually navigate the Chinese legal system? What are some of the tricks and/or traps? Will we have to rely on our Chinese partner to help us

- navigate through MOFCOM and/or other government bureaucracy? Who will we have on the ground who can double check information for you behind the scenes.
- ii) What is the Chinese bureaucracy really like? What is MOFCOM's role and purpose? How do they work? Who do we have that understands their role and can navigate through this approval process? Recognize that Chinese government approval is still a must in any transaction. MOFCOM functions as a gate keeper of sorts (allocation of limited resources).
 - iii) How easy is it to set up a new company in China, and the various business models that are available to a foreign company: Representative office, Equity JV, Cooperative JV, and WFOE?
 - iv) What are their pros and cons of each? (Representative Office, Equity JV, Contract JV, and WFOE). Super Majority Vote provisions (unanimity)
 - v) What kind of risk assessment will the client have to make here. What impact will the WTO have on these various Foreign Investment Enterprises (FIE's), the reason for selecting one over the other, and/or our ability to sell and/or distribute products in China? Today? Tomorrow? Going forward?
 - vi) Which of the four industry categories will we fall within: a) encouraged, b) permitted, c) restricted, and d) prohibited from foreign investment. Can we expect to get funding from the Chinese Government for a venture and/or project in China?
 - vii) Where can we find information on what industries China is or is not promoting? What are they trying to get out of these deals (technology? Hard currency? Expertise).
 - viii) Is the Chinese government always a silent partner in these deals? How will I know what, if any, role they will play?
 - ix) Do we need to be aware of and/or prepared for anyone looking for under the table payments and/or 'bribes' that would result in criminal sanctions either here or in China?
 - x) Are there any employment laws should we need to be concerned with? Are employment contracts the norm in China? Any special 'watch outs' if we decide to send foreign nationals into China? Role of local employment bureaus in hiring/firing situations.
 - xi) What is the state of Environmental regulations and/or health and safety concerns? Who has responsibility for clean up of brown fields? How likely is it that we can get reliable information on current environmental situation?
 - xii) What are Special Economic Zones? How do they work? Do we want to/need to set up my company in a SEZ? What do they offer (e.g., tax holidays, etc.).

- xi) What, if any, tax issues do I have to contend with? Any tax incentive programs available? Where can I learn more about them? Does it vary by industry and/or region within China?
 - xii) Are there any export/import restrictions to be aware of and/or concerned about?
 - xiii) What, if any, progress is China making on the protection of Intellectual property (e.g., trademarks, copyrights, software, patents, and trade secrets).
 - xiv) Is it difficult to repatriate money out of China? How is the currency situation in China, and will it have any impact on our operations?
- c) Further Legal Issues that should be considered vis a vis legal enforcement of contracts and IP Rights:
- i) What is it like to appear before a Chinese court? How bad is it? Is it getting better? Underdeveloped case law. Uneven quality of judges and lawyers. Abrogated all legal precedent prior to 1949. System is based on a Civil code format (e.g., France) vs. Common law system we're more familiar with. Not all laws are published, and translations into English are lagging – often 6 months or more. Opaque legal system has been one of the real difficulties in doing business in China.
 - ii) It is possible to get equitable relief? Will we want to avoid the Chinese courts if at all possible i.e., use of alternate dispute resolution mechanisms?
 - iii) Will a Chinese Court enforce a judgment entered in a foreign court?
 - iv) How long will it take for an IP and/or commercial case to work its way through the legal system?
 - v) Is ICC Arbitration a better alternative? Consider using Swedish Arbitration before the Stockholm Chamber of commerce, which has long been a favored ADR forum? Or should we consider using London, or Beijing, etc.
 - vi) Where should I hold the arbitration? If you don't want to use Stockholm or London, then you can always use Hong Kong. In addition, the Chinese government recently authorized the China International Economic & Trade Arbitration Commission to hear disputes involving FIEs, so Beijing is another option.
 - vii) Will the local Chinese court honor/enforce the arbitrator's award?
 - viii) Is China doing a better job of enforcing IP rights? Can we use the local police department to enforce our IP rights? How do courts see IP rights and enforcement? Are there experienced IP lawyers in China who can help? What about Patents and patent enforcement?

**THE ULYSESS CHEMICAL CORPORATION**

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Memorandum

From: Buck Mulligan, President & CEO

To: Senior Management

Date: September 15, 2003

Re: China Epoxy Plant – Opportunity for Expansion

As you all know, we have been asked by our parent company to explore the possibility of expanding into China. We have spent the past 6 months talking to our consultants, conducting general due diligence on business and market conditions in China, as well as interviewing possible business partners in China.” For those of us lucky enough to be involved in his exercise, it has been very informative and interesting.

We still have a lot of work to do, but I wanted to give all of you a basic understanding of what we are looking at doing in China, and give you some general background information about the Chinese market and the WTO before we proceed with our proposal to the Board.

On December 11, 2001, the Peoples Republic of China was admitted into the World Trade Organization (“WTO”) as a full-fledged member and 15 days later, on December 26, 2001, President George bush granted China Permanent Normal Trade Status. There is no doubt that these two acts have proven to be momentous steps in the continued growth and transformation of China into a market driven economy that will be open and accessible to foreign investment, should provide countless businesses opportunities for American companies.

Why is the WTO so important to UCC today? Up until today, many Chinese markets have largely been untapped because many market segments have been off limits to foreign companies, it has been difficult to get access to or participate in the political process necessary to approve most business deals, and foreign companies have been excluded from selling or distributing their products in China except for manufacturing or its own consumption.

China’s ascension into the WTO and normalization of trade status has seen the elimination of trade barriers, and the opening of markets to foreign companies like UCC, who are looking to expand into Asia and particularly into the Chinese market. And while

we see more and more of these doors opening every day, the reality is that there is still a long way to go – and much risk associated with doing business in China.

China has gone through immense change. In less than 25 years, China has made tremendous strides in transforming its moribund state run economy, into one of the strongest and fastest growing market driven economies in the World (it is already the 6th largest economy, surpassing Italy, and some people are predicting that it could pass Japan as the second largest trading nation within the next 20 years). According to Government data, China's economy has grown 10 fold, from 113 Billion Yuan in 1978 to 1,137,7 Billion Yuan in 1999, and China is predicting a further doubling in the GDP by 2010 (as of March 8, 2001 \$1 US equals 8.28 Yuan). In 1978 80% of industrial production was controlled by the state, today less than 40% is, and nearly 50% of foreign trade is now in private hands. There are over 325,000 joint ventures in operation in China, and over 32 million companies employing over 72 million Chinese.

Concurrent with this impressive industrial growth, has been an in-flux of Chinese from the largely poverty stricken rural areas of China to its bustling Cities. Today, China boasts 37 cities with populations of 1 million or more (13 of which have more than 2 million). Riding this wave of economic prosperity has been the growing Chinese 'middle class', with their own demand for consumer and luxury goods. More and more families have TV's, radios, CD's, computers, mobile telephones, and time for leisure activities. All of this translates into a huge, largely untapped market that has beckoned and will continue to beckon foreign businesses, who see the potential of these largely untapped markets, but who have not been able to penetrate the opaque economic, political, and legal systems that have been used to protect this massive market.

With these changes, we have also seen several of our major customers expanding or relocating their production facilities in China. This can be seen in the growth in domestic demand for epoxy resin, which according to our information has risen at an annual average rate of 17% over the past 20 years, rising from approximately 6,000 tons/year to over 170,000 tons today. Based on our most recent data, China's output of epoxy resin was 35,000 tons in 1997, 45,000 tons in 1998, 50,000 tons in 1999, 60,000 tons in 2000 and 90,000 tons in 2001. Today, China has 170-odd producers of epoxy resin, with a total capacity of approximately 140,000 tons/year. However, most of these producers, are relatively small, and only a few have production capacities over 10,000t/year.

We believe that China is now the world's fourth largest producer of powder coatings, and the output of epoxy resin type thermosetting powder coating accounts for 75% of its total. This has largely been fueled by the demand for electrical and electronic, communications, transport and building products in China. Today, the coating field consumes about 75,000 tons/year of epoxy resin, making up 46% of the nation's total consumption. Some forecast show that by 2005, the home demand for epoxy resin by the coating field will reach some 100,000 tons. At present, the domestic demand for epoxy resin by the composite material field is about 45,000t/a, which is also a main consuming field of imported epoxy resin. Estimation shows by 2005, the demand for epoxy resin by this field will reach 80,000 tons. Now, the demand for epoxy resin by the

electrical and electronics field is around 15,000 tons/year, which is expected to reach some 25,000 tons by 2005. The present domestic demand for epoxy resin by the adhesive field is around 4,000 tons, which is estimated to reach some 10,000 tons by 2005. Of most interest to us is the fact that domestic production still only accounts for about 32% of current needs – this means that the remaining 68% of capacity is still being imported into China. This presents a tremendous opportunity for us, given the otherwise stagnant world market.

Just since 2001, three major chemical companies have started construction of epoxy resin plants in China. A 40,000 ton/year plant in Zhangjiagang City, Jiangsu Province, a second 23,000 tons/year plant in Guangzhou Baiyun District, and a third plant, with 20,000 tons/year capacity due on line in 2003. Even with these 3 units on line, there will still be an under capacity of high-grade epoxy resin in China.

Yet, despite all of its promises, success is still more potential than reality. If we decide to expand into China today, we would still have to deal with many of the same hurdles that were faced by foreign businesses before China's admission to the WTO. We will still have to utilize the same limited forms of business: Representative Office, Joint Venture, or WFOE, we will still have limited access to China's domestic and financial markets, we will still have to obtain governmental approval of any transactions we decide to embark upon, we will still have to master China's Byzantine legal and political systems, we can take full advantage of the Chinese Market.

During the course of this project, I have had the chance to travel to a number of different countries in Asia, including China, and to meet and work with people from many different cultures. One the critical lessons that I've learned is that overlooking cultural differences is a recipe for disaster, especially when setting up a joint ventures, acquiring a company in a foreign country, or moving into a new market. Therefore, before any of we head off to China, we will want to first understand the legal and political processes that are only slowly catching up to the rapid pace of economic change and all of the hype surrounding this vast economy. And to that, you will need to find lawyers and consultants who have experience doing business in and/or who have lived and worked in China. In other words, people who speak the language – both linguistically and culturally.

The lesson I've already learned is that we can't focus solely on the financial aspects of the deal, or the legal terms and conditions of the deal, but we have to make sure we take time to not only understand the men and women who will be sitting across the table from us, but their culture. We will want to get to know them personally: create a personal as well as a professional relationship with them. Remember that we will be doing business in a foreign country with a different political system, a different culture, and a different view on world affairs and their place in the world. While we can say that both the American and Chinese businessman are motivated by the same thing – profits – the way they go about achieving that goal can be very, very different from how we might view things.

**THE ULYSSESS CHEMICAL CORPORATION**

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Memorandum**From: William J. Calore, Vice-President & General Counsel****To: Outside Counsel****Date: October 1, 2003****Re: China Epoxy Plant – Prep for October 10, 2003 Meeting**

Ulysses Chemical Company is one of the leading companies in the development, manufacture and sale of chemical resins for the automotive, marine, and construction markets. Ulysses is a subsidiary of the J. Joyce Group PLC, a multinational company, with its world-wide headquarters in London, England. Ulysses has its headquarters in Cincinnati, OH, with three regional business centers: one in Cincinnati, OH (North America), one in San Paolo, Brazil (South America), and the third in Vienna, Austria (Europe). In addition, Ulysses has four technology centers; 10 manufacturing sites, plus sales and marketing representation in over 40 countries around the world. We have over 50 years of research and development experience in the composites and coatings industries.

The Ulysses Chemical Company is looking at starting up operations in China to tap both the growing Chinese domestic market, and to serve as a hub for exporting products throughout the Asia Pacific region. The initial plans call for the building of a 31,000 metric tons per annum epoxy resin plant in the People's Republic of China, as well as a Research & Development complex. This plant will put us in close proximity to several key customers and raw material suppliers. We hope to build a strong presence in China and throughout the Asia Pacific region, as we see epoxy resins as a very important raw material for many high value, downstream industries, including windmills, marine, automotive, electronics, and appliances.

A key issue for Ulysses will be access to a cheap, but educated labor pool, water, efficient logistics capability, and flexible production methods. A new plant would include the latest technologies and equipment. This is important since as a chemical plant, it will by necessity mean that highly combustible and flammable products will be produced and kept on site. In addition, the manufacturing processes produce several hazardous byproducts that will have to be disposed of in the regular course of production.

Fn 1. Epoxy resins are any of various tough resistant thermosetting synthetic resins containing epoxy groups: typically used in surface coatings, laminates, and adhesives.

The plant will produce solid epoxy resin used primarily to produce powder coatings; solid solution epoxy resin for marine and protective liquid paints; and brominated epoxy resin for the production of electrical laminates. These products rely on Ulysses's proprietary Epoxy technologies, which will enable it to become the first domestic integrated Chemical epoxy plant offering international standard epoxy compounds in China. The idea is to replace products currently being imported from facilities located elsewhere in the world, and to provide a local supply of epoxy resin to our existing customers as well as new customers in one of the largest markets in the World. In addition to expanding its global presence and demonstrating our commitment to the growing epoxy industry in China and the broader Asia Pacific region, it is intended to reduce manufacturing and transportation costs.

The epoxy resin markets of China are concentrated around Shanghai in Eastern China and Guangzhou in Southern China. According to Ulysses's research, the chemical industry has been in the midst of a major wave of investments in China, represented by leading companies such as BASF, BP, Bayer, ExxonMobil and Shell. Ulysses is considering several options, including setting up a wholly foreign owned enterprise, or a equity joint venture. Detailed data shared by several major investors on production ventures started since 1997 indicates that 44 percent of the joint ventures are losing money, as compared with only 33 percent of the wholly foreign-owned enterprises (WFOE).

These mega-projects have been justified based on a perception that China's political and economic stability will continue, and entry into the World Trade Organization will further enhance a pro-business environment there. Our data also suggests, however, that major investors in the chemical industry are beginning to focus more on improving profitability of existing operations than on additional new investments. Many of our competitors are already heavily invested in China, with some already having as many as 10 to 15 production ventures in China. Many of these existing operations are still under performing.

Ulysses is currently talking to Beijing Petrochemical Company, a leading manufacturer of chemical products in China, with more than 10,000 employees and 10 plants located throughout China, including the Tangshan Chemical Works, which would be contributed to the Joint Venture. Its production capacity and sales volume account for a significant share of the domestic market. It operates one of the nation's major petrochemical complexes, and has an extensive domestic market network. While it has a leading position in the chemical market, it suffers from a bloated payroll, antiquated production facilities, and numerous environmental legacy issues. It is looking for a partner, who can infuse new technology, and help it modernize its production facilities in order to allow it compete in the world market.

While Beijing PetroChemical Company offers many competitive advantages to a greenfield, including a preexisting facility, established distribution network, and ties to the Central government, there are a number of reasons for considering a WFOE, not the least of which is the likelihood of extensive environmental issues at the Tangshan site, and concerns about protection of key technology that would be introduced into China.

The two locations under consideration are: the Shanghai Chemical Industrial Park, which is about 50 kilometers from Shanghai, China, if Ulysses elects to utilize a Greenfield approach, or at the existing plant owned by Beijing Chemical Company, which is located in the Tangshan Seaport Development Zone, in the city of Tangshan, Hebei, China, a location which is in close proximity to both the Pacific Ocean and the industrial triangle comprised of Beijing, Tainjin and Tangshan. While both Shanghai and Tangshan have seen tremendous growth, the city of Tangshan sees the modernization of the existing epoxy resin plant and the construction of an R & D facility as an important cornerstone for the City and the Industrial Park as it attempts to become a world class manufacturing base for Western manufacturing companies. According to Beijing Chemical Company, Tangshan is willing to offer extensive tax and financial incentives to bring Ulysses to its established Development Park. We have also been approached by both the mayor of Shanghai as well as several delegates from the Shanghai Chemical Industrial Park to arrange a visit and tour of the Park and City_.

Construction of a new plant is intended to began in early 2004, with the first phase of the project is expected to be mechanically complete and operational in 2005, and will also include construction of the R&D Center, which will be located next to the factory. Initial plant production is anticipated to be over 10,000 tons, primarily for use in China, with additional export sales in Asia Pacific targeted at 20,000 over the next 3 years. Once completed, total annual capacity for will be 31,000 metric tons, making the company the leading producer of epoxy resins in Asia.

The R&D facility will be a state of the art facility. Initial plans call for a 60,000m² facility, with employment estimated to grow to in excess of 100 employees (most will have masters degrees or above). At present, we are estimating an initial investment of 20 million in USD (165,000,000 RMB). The R&D Center will engage in R&D of fine chemicals, including synthesis of organic compounds, polymers and their related products, engineering plastics and functional composite materials. Ultimately, we hope to generate external R&D projects. There will be more than 100 large-scale analytical instruments, such as NMR, LC/MS etc. installed in the laboratories.

We need to identify the various corporate, Intellectual property, commercial, and EHS related issues that we will have to face in conjunction with this venture in preparation for a Board Meeting, which is scheduled for end of October, where they will . We will have a meeting on October 10, 2003 at the company's Cincinnati headquarters, to discuss these issues, develop step plans, and assign areas of responsibility. I look forward to working with you on this exciting project. Please feel free to forward any questions or material that you think would be helpful prior to the meeting.

Fn. 2. I have attached some information that our local Chinese Agent has pulled together about the cities of Shanghai and Tangshan, where we are considering locating our facility, as well as the two industrial parks: Shanghai Chemical Industrial Park in Shanghai, and the Tangshan Seaport Development Zone in Tangshan. This can be found at the end of this memorandum.

BACKGROUND INFORMATION:

Shanghai: Called "Hu" for short, Shanghai is located at the estuary of the Yangtze River in the middle section of China's eastern coast. A fishing village in ancient times, Shanghai was under the State of Wu during the Spring and Autumn Period. It was established as a town under the name of Shanghai in the Song Dynasty (960-1279), and became a city in 1927. Today, Shanghai is China's second largest city, with a population of approximately 13.5 million, and is one of the four cities in China (Beijing, Tianjin and Chongqing are the other three) directly under the control of the Central Government (commonly referred to as Special Economic Regions). It was divided into foreign concessions after the Opium War in 1840 and continued to be an open port until the 1940s. Today, Shanghai is one of China's biggest and busiest port, and perhaps its most important industrial and commercial center.

It is the home to one of China's 2 stock exchange markets (the other is located in Shenzhen). Its residents are known for their business talents, quick wit and sophistication. Its fashions and standards of products and services are more international than other Chinese cities. Its shopping is the best in China. Partly because of the city's economic importance, ever since the Mao era, Shanghai has been the launching-pad for a number of national political leaders; both of China's current president and premier, Jiang Zemin and Zhu Rongji, for instance, served as the mayor of Shanghai before they moved on to their top positions in Beijing.

Shanghai, is making every effort to become a world center of economy, finance, and trade. Its manufacture, processing, trade, logistics and other service industries are undergoing rapid growth. In addition, Shanghai boasts convenient transportation by land, rails and water, and together with its neighboring Jiangsu and Zhejiang provinces, is the most developed regions in China, with strong demand of petrochemical products. All of which provide significant advantages for companies looking to locate in China.

Shanghai Chemical Industrial Park (SCIP), which is the largest one in Asia and up to international standards, is undergoing major expansion. It will greatly promote the economy alongside Yangtze River and petrochemical industry in China, and also offers new opportunities for the development of international petrochemical market.

Shanghai Chemical Industry Park is a comprehensive industry park with petrochemical industry as the key item, laying emphasis on developing petrochemical, petrochemical severity processing and fine chemical products. The total proposed area covers 23.4 square kilometers. The phase I project covers an area of 10 square kilometers and is mainly for the construction of heavy chemical and utility island projects. The phase II project covers an area of 13.4 square kilometers and is mainly for the construction of petrochemical severity processing and fine chemical projects.

Shanghai Chemical Industry Park will provide all the investors with an excellent investment environment in accordance with the principle of overall planning, implementation step by step, unified planning for utilities, development first and complete auxiliary facilities.

The phase I project of the Shanghai Chemical Industry Park with an investment of RMB150 billion started construction on January 6, 2001. This is the largest project in Shanghai in terms of investment after entering into the century.

Shanghai Chemical Industry Park Development Co., Ltd. is responsible for running the Shanghai Chemical Industry Park's development and construction. The company, with a total capital of RMB 2.37billion, is a multi-investor enterprise jointly established by national and local enterprises. It is jointly invested by SINOPEC Shanghai Petrochemical Company Limited, Shanghai Hua Yi (Group) Company, Shanghai Gao Qiao Petro-Chemical Corporation, Shanghai Industrial Investment (Group) Co., Ltd., and Shanghai Jiu Shi Corporation.

Attracted by the huge potential of China's chemical market and the prosperous future of the Shanghai Chemical Industry Park, many leading chemical companies have joined forces with Chinese companies to help build projects in the park. Among the projects there are 900,000 ton per annum ethylene project jointly funded by SINOPEC, SPC and BP, Shanghai Integrated Isocyanate Project with a total capital of US\$1billion and jointly funded by BASF of Germany, Huntsman of the United States and Shanghai Tian Yuan Group, 10,000ton per annum Poly Isocyanate Project and 100,000 ton per annum Polycarbonate Project invested by Bayer, Germany, PVC Project of Tian Yuan Group and 200,000 ton per annum Phenol & Acetone Project of Shanghai Gao Qiao Petro-Chemical Corporation etc.

By 2005, with the completion of 12 large scale joint ventures or exclusive investment projects, at Hangzhou Bay, a modern, world class new chemical city will emerge on the horizon.

ADMINISTRATION AUTHORITIES FOR THE SHANGHAI CHEMICAL INDUSTRIAL PARK

There are three levels of administration authorities for the Park: Shanghai Chemical Industry Park Leadership Group (the "Leadership Group"), Shanghai Chemical Industry Park Administration Committee (the "Administration Committee") and Shanghai Chemical Industry Park Development Co., Ltd. (the "Development Company") At the top of the administrative hierarchy is the Leadership Group which is mainly responsible for establishing general policies and principles for the Park.

The Administration Committee is an organization set up under the authority of the Shanghai Municipal Government. Its responsibilities include: formulating and amending the development projects, plans and industry policies; approving the investment projects and land use, supervising the construction projects; coordinating the daily administration by different governmental authorities, such as customs office, foreign affairs office and Bank of China Shanghai Branch; providing the necessary instructions and services for the enterprises in the park; performing the other duties assigned by Shanghai City government.

Shanghai Chemical Industry Park Development Co., Ltd assumes the duty for the development and construction of the Park, investment and construction of municipal infrastructure facilities and utilities in the Park.

LEGAL FRAMEWORK FOR ATTRACTING FOREIGN AND DOMESTIC CAPITAL

- **Approval Authorities**

With the authorization of the Shanghai Foreign Investment Commission, the Administration Committee is granted the authority to examine, approve, verify and confirm certain foreign investment projects and enterprises in the Park. The Administration Committee has the authority to approve the establishment of the following projects:

(a) foreign investment projects in the "Encouraged" category which are not subject to State overall planning control;

(b) foreign investment projects in the "Permitted" category whose total investment amount is no more than 30 million US Dollars; and

(c) foreign investment projects in the first sub-category of the "Restricted" category and whose total investment amount is no more than 5 million US Dollars. The Administration Commission is also authorized to approve the change to the joint venture contracts and Articles of Association of foreign investment enterprises. Moreover, with the authorization of Shanghai Municipal Development Planning

Commission, the Administration Commission is also authorized to examine, approve and administer investment projects in the "Encouraged" and "Permitted" categories.

- **Formation Procedures**

According to the Administrative Measures, the time limit for the Administration of Industry and Commerce to complete the registration procedures for setting up an enterprise in the Park is shortened to three to five working days as long as all the required documents are submitted.

- **Preferential Policies**

The Park is considered as a national-level development zone and according to the official of the Park, with the authorization of the State Development Planning Commission, the companies within the Park enjoy the tax preferential policies that are identical to those in the Pudong New Area.

- **Land Use Right**

As the developer of the land within the Park, the Development Company is responsible for land use right transfer. The enterprises and organizations investing in the Park only need to sign land use right transfer contracts with the Development Company before completing the formalities for acquiring land use right with the Administration Committee.

TANGSHAN, HEBEI PROVINCE

Hebei is mountainous in the north and the west, where rich iron and coal deposits are extensively mined. The province also has extensive deposits of oil and natural gas. Hebei is part of the North China Plain. The land is fertile and rainfall is adequate, but until water conservation programs were instituted, the province was subject to severe drought and flooding. These recent improvements, along with the enlargement of farms and the expansion of mechanization, have greatly increased agricultural output. Hebei is a major cotton-producing province and an important producer of wheat.

Tangshan, city (1994 est. pop. 1,110,200), is located in NE part of Hebei province, China. It is a coal-mining center in the Kailan basin, Tangshan is also a major industrial hub with iron and steel works. It was completely destroyed by a massive earthquake (8.2) on July 28, 1976. This was the most deadly earthquake of the twentieth century, and the strongest since the Alaska quake in 1964 which was of magnitude 8.4. The Chinese government estimated that over 250,000 people were killed (some put the number as high as 400,000). It has since been completely rebuilt. Its manufactures include machinery, motor vehicles, chemicals, textiles, glass, petroleum products, and cement. Known as "The Treasured Land to the East of Beijing", Tangshan is a famous coastal city with a 100 year history of heavy industrial activity.

Tangshan enjoys a favorable geographic location and abundant natural resources and exceptional advantages in development. The low mountainous and hilly area in the north abounds in such fresh and dry fruits as chestnuts, walnuts, apples, hawthorns, pears, peaches, grapes, etc. The "Jingdong Chestnuts" is well known both at home and abroad. The central plain area abounds with such agricultural and sideline products as maize, wheat, rice, cotton, peanuts, vegetables and so on. For this reason, it is called "The Granary in the East of Hebei Province". The coastal area in the south is the important fishing ground at Bohai Bay and the producing base of "Changlu Salt."

Tangshan is rich in mineral resources. Tangshan has workable coal reserves of 6.25 billion tons and that of iron ore 5.75 billion tons, making it the main base of coking coal production and one of the 3 biggest producers of iron ore in China. Besides, there are also rich reserves of limestone, petroleum, natural gas, gold, silver, manganese, lead, zinc, quartz, mica phosphorus and so on.

Tangshan has a solid economic foundation and strong capabilities in terms of development and opening up to the outside world. Since 1989, it has ranked among the cities in China whose GDP exceed 10 billion RMB. In 2000, Tangshan's GDP hits 91.5 billion yuan and Tangshan has become one of the fifty strongest large and medium-sized cities in China in terms of comprehensive economic strength. The agricultural economy of Tangshan has been developing in an all-round way. Its per capita possessed output of cereals, edible oil, meat, eggs, aquatic products and vegetables is more than the average level in Hebei Province, as well as in China. The industrial economy of Tangshan is undergoing sustained and rapid development. Tangshan is called "The Cradle of Chinese Modern Industry" because China's first modernized coal mine, the first section of standard

gauged railway lines, the first steam locomotive, the first pack of cement and the first piece of sanitary ware ceramic were all originally built or made in Tangshan. Through more than 100 years of development, Tangshan has become the industrial base of China for the production of energy and raw materials, with coal, iron & steel, power, building materials, machinery, chemical industry, ceramics, textile, paper-making and food stuff as its ten pillar industries. A lot of large-sized and medium-sized enterprises of Tangshan hold important positions among the same trades in the country, such as Kailuan Coal Mine, Tangshan Iron & Steel Company, Tangshan General Power Plant, Bohai Cement Group, Napu Salt Works, Tangshan Ceramic Group, Tangshan Sanyou Group, Tangshan Gears Plant, Tangshan Rolling Stock Plant, and so on.

Tangshan is speeding up its pace of implementing the strategy of "export-oriented economy bringing along the others" and the city has become the hot spot for foreign businessmen to make investment in. So far, foreign businessmen coming from 40 countries and regions. The investors include a number of well-known and influential big companies in the world, such as Cheung Kong China Infrastructure Limited HongKong, China Travel Service, Bank of China (HongKong), China Merchants Holdings Co. Ltd., Taiwan Top Valve Co.Ltd., Sithe Energies Group (U.S.A.), Panda Energy Inc.(U.S.A.), Long-Airdox Inc. (U.S.A.), Deutsche Babcock, French Danone, Tang Freres S.A.(France), Japanese Panasonic, Itochu, Toyota, Asin, NGK, etc. Tangshan has more than 500 enterprises whose products have entered foreign markets involving more than 130 countries and regions, with its export products consisting of 39 categories and more than 270 kinds. Tangshan City has established sister city relationship with Malmo City in Sweden, Sakata City in Japan, Lincoln City in England and Cedar Rapids in America.

Through 20 years of construction and development since the catastrophic earthquake in 1976, great changes have taken place in Tangshan in terms of infrastructure and urban appearance and environment. The completely constructed urban area has reached 16.1 square metres, and the per capita living space is 9.8 square metres. Such coverage rate as tap water supply, central heating supply and gas supply stands at the forefront among the large and medium-sized cities in the country. In 1990, Tangshan was awarded by the United Nations, for its remarkable achievements in improving the living conditions of the people. Within the region of Tangshan, there are three arterial railways running through from the west to the east and five feeder railways and local railways crossing from the north to the south. A highway network has formed with the three State Highways named Beijing-Yushu H.W., Tangshan-Qinhuangdao H.W., and Beijing-Tangshan H.W. as its arterial. The three express ways respectively named Beijing-Shenyang, Tangshan-Tianjin and Tangshan-Jingtang Port are connected in Tangshan. A modern land communication and transportation system has come into being. As for seaway transportation, three ports are within its easy reach, with Qinhuangdao Port to the east, Tianjing Xingang Port to the west, and Jingtang Port in the middle. Tangshan's post and telecommunications system offers excellent service which makes it possible to dial directly to every city in China and 182 countries and regions in the world.

At present, utilizing its existing economic foundations and favorable conditions, Tangshan is firmly carrying out the strategies of opening up to the outside world, enlivening the city by developing science and education, and making sustainable development, in order to achieve the three big breakthroughs in opening up to both home and abroad, adjusting economic structure and improving science and technology. By the year of 2010, Tangshan will basically realize its modernization. Tangshan is showing its glory again thanks to such advantages it enjoys as neighboring Beijing and Tianjin, Circum-Bohai Bay, abundant in resources and being a strong economic city.

Hebei Development Zones.

Since the Qinhuangdao Economic & Technical Development Zone was approved by the State Council and established in October 1984, 21 development zones at or above provincial level have been set up in Hebei Province by the end of 1998. Among them the Qinhuangdao Economic & Technical Development Zone, the Shijiazhuang New High-tech Industrial Development Zone, Baoding New High-tech Industrial Development, and the Tangshan Seaport Development Zone. Most of the development zones in Hebei are located in the areas around the Bohai Sea or around Beijing and Tianjin or areas with main railway lines and trunk highways running through. There are abundant natural resources and facility of transportation and telecommunications in these areas. Backing on Beijing and Tianjin, these areas enjoy great market potential as well as and easy access to the funds, personnel, information and technology in these two large cities. Moreover, the prices of land and labor are cheap throughout the province, hence the cost of development in these areas will be comparatively low.

The investment environment in these zones is becoming perfect after years of development and construction. Infrastructure has been accomplished with roads, electricity, water, gas, heat and communications available, and the ground has been well leveled.

It is certain that all the provisions and laws concerning foreign investments are strictly observed, and all the legal rights and interests belonging to investors from both home and abroad are safely protected. Representing the local government, the administration committee set up in each development zone practices total leadership and control over the zone. Therefore, services concerning foreign affairs are ready and convenient there. Foreign investors can go through in the zone all the formalities from project proposal, examination and approval of contracts and articles of association to receiving operation license.

The fast growing development zones have become Hebei's windows reflecting its opening-up program and new growing sectors in economy. Over the past few years, the development zones have attracted 1053 overseas firms with contracted investment worth US\$2.33 billion, accounting for 20% of the total foreign funds actually invested throughout the province, while 5,591 domestic enterprises have their funds worth RMB 26.65 billion actually invested in the zones. Thus, a preliminary group of industries involving machinery, electronics, chemical, building material and foodstuff has been formed. Businessmen from more than forty countries and regions such as the United States, Canada, the United Kingdom, Germany, Japan, Korea, Singapore, Hong Kong and Taiwan have come to Hebei for development by making investments and establishing businesses.

Tangshan Seaport Deveopment Zone is a development zone at provincial level set up in July, 1992. Located in the northern part of the city proper of Tangshan, the zone covers a designed area of 10 square km with three expressways running through. Backing on such an important industrial basis as Tangshan, it enjoys every facility of the ready infrastructure, resourceful research capability and well-trained personnel. The zone is

divided into five functional sections. They are sections of industrial production, technology and trade, complex services, residence and bonded warehouse, respectively. The course of construction in the zone is divided into three phases. The first phase of construction, with an area covering 3.22 square km, was accomplished as at the end of 1999. 381 enterprises (including 38 foreign-funded firms) have registered into the zone with a total investment reaching 1.4 billion yuan. The actual utilization of foreign funds has amounted to US\$48 million and the 343 domestic-funded firms have actually invested RMB700 million yuan. Companies from Japan, USA, Canada, France, and Hang Kong have located facilities in the Zone.

The key projects being promoted for foreign investment:

1. Introduction of foreign capital and advanced practical technologies to develop crop-planting and forestry and fruit-growing industries; to accelerate agricultural comprehensive development and renovation of the average yield and low yield farmland; to introduce improved varieties of grains, and to develop water-saving and dry land crops and to promote the agricultural industrialization.
2. Actively use foreign funds to speed up construction of highways, electric power generation stations, environmental protection projects, economical housing projects and urban public infrastructure.
3. The structural regulation of the chemical (pharmaceutical), building materials, metallurgy and foodstuffs industries will be well done and they will be optimized and upgraded.
4. Foreign investors are encouraged to invest in such projects in the form of capital, advanced technology and equipment as electronic information, new materials, and biological engineering.
5. Actively make use of foreign funds to open more sectors to the outside world of internal and foreign trade, finance, tourism and service and other tertiary industries.

Foreign investors are encouraged to invest in the following projects:

1. New agricultural technology, agricultural comprehensive development, energy sources, communications and important raw materials.

For instance: Reclamation and development of wasteland, waste mountains, and shoals (exclusive of those areas where there are military installations); renovation of farmland with average and low yield; development and introduction of fine varieties and breeds of farming crops, forestry, animal husbandry, and fisheries. Comprehensive development and utilization of coal minerals; and development projects of new energy sources, construction of highways, ports, civil airports and water conservancy facilities; new type building materials and non-ferrous metallic composite materials, industrial plastics and plastic alloys, semi-conductors and specialized photo-electric materials.

2. Projects of high technologies, advanced technologies and new equipment and new materials capable of promoting the performance of products, saving energy and raw materials, promoting economic results and meeting the requirements of the market, that are currently under-produced in the country.

For instance: Manufacturing of high performance welding robots and welding production lines; project of ultrahigh power 50-ton electric furnace; the making of large and medium-sized computers; the manufacture of satellite communications system equipment.

3. Projects that can meet the demands of the international market and promote product upgrading, develop new markets, expand overseas sales and increase the volume of exports.

For instance: Development project of new varieties and new technologies of quality and high yield farming products, such as sugar crops, fruit trees, vegetables, flowers and forage grass; project of printing, dying and after-treatment of industry-use special textile products, high quality artificial chemical fabrics, and superb texture surface materials; and project of new type drugs produced with biological engineering technology.

4. Project of new technology and new equipment by which resources can be used for multiple purposes, or reproduced, and where environmental pollution can be prevented.

For instance: Project of wastewater treatment equipment with a capacity of 142,500 tons a day; project of ecological environment control and construction; project of producing purging agents, catalyzers and other product for purifying the vehicle exhaust gases; project of reproducing resources and comprehensive utilization of resources; project of environmental pollution control and monitoring and testing technologies.

5. Other projects encouraged by state laws and regulations and such projects as are included in the category to be all exported with the permission of the government.

Post-WTO IP Protection in China

ACCA Annual Meeting -Doing Business in China

October 10, 2003, San Francisco

Catherine Sun, Esq.
Hong Kong, China

Political and Business Environment in Post-WTO China

- China joined the WTO on December 11, 2001
- Privatisation after the Communist Party's 16th Congress
- China became the top Foreign Direct Investment destination surpassing the U.S. by October 2002
- Peaceful leadership handover in March 2003
- SARS Fiasco and its impact
- WTO commitments bring business opportunities to foreign companies
- 2008 Olympic Games in Beijing
- 2010 World Expo in Shanghai

China's WTO Commitments in IP

- China revised its major IP laws and regulations to be WTO compliant
- Transparency in legislation and enforcement
- Uniform application of laws and regulations
- IP enforcement in line with TRIPS Agreement
 - Implement effective enforcement procedures
 - Provide remedies that have a deterrent effect

Major IP Laws Revised

- Patent law (1985, amended in 1992, revised in 2000, Implementing Rules revised in 2001 and 2003)
- Copyright law (1991, revised in 2001, Implementing Rules revised in 2002)
- Trademark law (1982, amended in 1993, 2001, Implementing Rules revised in 2002)

Revised Patent Law

- Offer for sale could be infringing
- Preliminary injunction is available: patent owners have burden of proof, post bond and 48 hours rule
- Decisions on patent re-examination and validity are appealable
- Administrative enforcement adjudication by patent administrative authority is subject to judicial review
- Statutory damages increased via judicial interpretation

Revised Copyright Law

- Expand copyrightable subject matter to databases
- Expand right of performing arts to include rental right
- Administrative adjudication of foreign related infringement by local authorities
- Licensing/Assignment agreement must be in writing and record with government
- Preliminary injunction is available
- Increase statutory damages

Revised Trademark Law

- Expand registrable subject matter to three-dimensional marks
- Enhanced protection of well-known trademarks
- Trademark Office Administrative decisions can be appealed
- Preliminary injunction is available
- Increase statutory damages

Available IP Rights in Post-WTO China?

- Patents
- Trademarks
- Copyrights
- Know-hows
- Trade secrets
- Domain names
- Plant variety rights
- Layout designs of integrated circuits

What IPR Enforcement Measures Available?

- Bilateral negotiation via government channels
- TRIPS dispute resolution mechanism via multilateral negotiations and sanctions
- Chinese domestic measures offered by its revised IP infrastructure:
 - Non-litigation measures: direct negotiation, mediation and arbitration
 - Administrative enforcement at central and local levels
 - Civil remedies
 - Criminal penalties

Enforcement Post-WTO

- More IP cases filed in courts (Beijing IP courts received about 4500 complaints in 2002)
- Rocket docket: 6 months for trial and 3 months for appeal
- Higher dispute amount and damages award
- More complexity
- More foreign companies involved
- Fair treatment to foreign companies by Chinese courts
- More transparent: public hearings and review court records by parties' representatives

Enforcement Post-WTO (continued)

- Post-WTO courts focus more on adopting discovery/evidentiary rules
- Courts are open to experts for patent cases
- Judges are eager to learn and adopt international norms in adjudicating cases: if you do not find a similar case in China, bring a U.S. landmark case to court's attention, and it will work
- More and more foreign law firms are allowed to do business in China: increased competition and higher quality of legal practice
- IP right holders become more proactive

Challenges Facing IPR Owners

- Low damages award
- Lack of transparency
- Lack of evidentiary and discovery rules
- Judges and practitioners need more training
- Government officials involved in IP enforcement need more checks and balances
- Commitment of financial resources by Chinese government on enforcement
- Corporate budget

Are IP Rights Enforceable in China?

Most likely, if IP holders

- Take initiative
- Allocate adequate resources
- Incorporate China IP strategy into the business plan
- Adopt preventive measures
- Pre-set the objectives of actions: market promotive, media attractive, government relationship oriented, injunctive, punitive or compensatory?
- Be aware that the Chinese government is obligated/committed to making IP enforceable in China under the WTO regime

IP Enforcement Should Be Integrated in A Company's IP Strategy: Micro-Measures Available

- Formulate a practical IP strategy
- Effective IP enforcement is centralised
- Influence and educate your customers, distributors, contractors, employees and anyone related to respect IP
- Lobbying when possible: both to Chinese government and your government
- Preventive measures always pay off
- Remedial measures must be taken from time to time
- Allocate budget: expect to stronger enforcement result in China but allocate no/little resources on the contrary
- Intimidate potential infringers

How to Enforce IP Rights Post-WTO?

- Preventive measures by IP holders
 - Internal audit of IP
 - Carefully select local partners, licensees and distributors
 - Confidentiality agreement and other contracts
 - Constantly monitor commercial and IP activities of competitors, licensees, distributors and customers
- Direct negotiation, mediation and arbitration

How to Enforce IP Rights Post-WTO? (continued)

- Administrative
 - Adjudication by administrative agencies
 - Upon agency's own initiatives
 - Upon interested parties' requests
- Litigation
 - Administrative litigation
 - Civil litigation
 - Criminal prosecution

Major IP Administrative Enforcement Agencies

- Patents: The State Intellectual Property Office and its local authorities (<http://www.sipo.gov.cn>)
- Trademarks and Unregistered Rights: The State Administration of Industry and Commerce (SAIC) and its local offices (<http://www.saic.gov.cn>)
- Copyrights: the National Copyright Administration (<http://www.ncac.gov.cn>)

Other IP Administrative Enforcement Agencies

- Ministry of Public Security
- Ministry of Commerce
- Ministry of Science and Technology
- Ministry of Information Industry
- Ministry of Agriculture
- Ministry of Health
- Ministry of Culture
- Customs General Administration
- General Administration of Quality Supervision, Inspection and Quarantine
- State Food and Drug Administration

Local IP Administrative Enforcement Agencies at Provincial and Municipal Levels

- Local agencies of industry and commerce
- Local intellectual property bureaux
- Local patent administrative authorities
- Local copyright administrative authorities
- Local Customs offices
- Local agricultural administration and forest administration for plant variety rights
- Local people's government

Administrative Enforcement

- Inexpensive
- Fast track
- But no damages
- Administrative agencies can order
 - Cease infringing activities
 - Destruction or confiscation of infringing products and equipment
 - Imposition of fine

People's Courts and IP Courts

- Basic trial courts, intermediate courts, high courts and Supreme People's Court
- Total 43 special IP courts (now called No. 3 Civil Tribunal) in China
- Judges in Beijing IP courts have the highest quality in terms of experience, knowledge, training and professionalism
- 7 No. 3 Civil Tribunals of Intermediate Courts in Beijing, Shanghai, Tianjin and Chongqing
- No. 3 Civil Tribunals of Intermediate Courts in 27 capital provincial cities
- 4 in special economic zones of Shenzhen, Zhuhai, Shantou and Xiamen
- 5 in specially appointed cities of Dalian, Qingdao, Yantai, Wenzhou and Fushan

Subject Matter Jurisdiction of IP Courts

- Copyright disputes
- Trademark and service mark disputes
- Patent disputes
- Technology contract disputes
- Unfair competition
 - Trade secret disputes
 - Injure commercial reputation of famous goods
 - False advertising disputes
- Plant variety right disputes
- Layout design disputes

Personal Jurisdiction and Venue

- Where defendants reside or have places of business
- Where contracts are performed
- Where infringing activities occur
- Where multiple courts have jurisdiction, the one that accepts the complaint first has the jurisdiction

Civil IP Litigation

- Statute of limitation: two years from when the IP holder knew or should have known of the infringement
- Preliminary injunction is available
- Experts can be retained by parties and the Court
- Damages calculation
- Statutory damages are increased to USD60,000 maximum
- Attorneys' fees are rarely awarded, but reasonable investigation costs and court fees can be collected by the winning party

Preliminary Injunction

- New injunctive relief offered to comply with TRIPS
- Request can be made prior to filing the complaint
- Applicants can be IP holders, licensees and legal heirs and assigns
- Exclusive licensees can apply individually
- Request must be in writing supported by evidence
- Applicant must post bond
- Courts must make a determination within 48 hours
- The parties can appeal court's decision within 10 days but it will not stay the order
- If a court orders to enjoin the infringing activities, the applicant must file a complaint within 15 days, otherwise the order will be vacated

Criminal Prosecution

- IP Crime is defined by Articles 213-219 of Chinese Criminal Code implemented on October 1, 1997 and interpreted in 2001 by Supreme People's Procuratorate and Ministry of Public Securities
 - Passing off registered trademarks
 - Sales of goods bearing counterfeited marks
 - Illegal manufacture and sales of fake trademark logos
 - Passing off patents
 - Infringement of copyrights
 - Sales of pirated copyright work
 - Infringement of trade secret
- Prosecute by public prosecutors
- Complaint filed by IP holders
- Case transferred by administrative agencies in adjudicating civil disputes

Summary of Current Situation

- TRIPS requirements to properly enforce IP
- Better and friendlier legal environment
- More qualified legal professionals
- More budget allocation by foreign companies for China IP
- Chinese government becomes more sensitive and responsive on enforcement issues
- More profits made out of Chinese market by foreign business

Advice to Foreign Companies

- Acquire China related IP assets if there is a strategic need
- Carefully select local partners/licensees
- Strategically decide what to disclose in China
- Carefully select internal local IP personnel and seek for external help when necessary
- Relationship building with local partners, licensees, distributors, customers and government
- Enforce proactively within budget
- China market is too important to ignore

IP Issues in China Related Business Transactions

Catherine Sun

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As an in-house attorney of a U.S. corporation, you may have experience dealing with Chinese companies. If you have not, you will because China now has attracted foreign direct investment from all over the world, and in year 2002 alone, it attracted 52 billion U.S. dollars, ranked the number one in the world. Business activities in China and investment in China are stronger than ever. As an in-house legal person, you may not be specifically trained in IP and you may not be fluent or even knowledgeable about Chinese language or culture. What you should be aware of with respect to IP in dealing with China-related business transactions, investment and commercial disputes? Based on my experience, the issues highlighted below are of special importance.

1. IP audit

China-related IP audit is unique and it is different from any other audit you have participated in the U.S. When your company is planning to enter China market, licensing technology to Chinese parties, set up franchising operations, form a joint-venture or wholly foreign-owned enterprise, or build factories and R&D centres in China, IP auditing of your own organization and the target Chinese company is a pre-requisite. When you do your own company's IP audit with an eye towards Chinese market, you should always keep your China IP strategies in mind. You are also required to understand your company's business entry strategies and post-entry growth strategies in China market. When doing your IP audit and due diligence, you need to specifically focus on IP acquisition, its exploitation and enforcement in China.

If your company plans to acquire a Chinese target or license technology to a Chinese party, you need to be prepared to do an IP audit and conduct due diligence of the Chinese party. For any Chinese IP audit you need to review a substantial amount of documents and conduct interviews with senior officers of the company. As a U.S. in-house doing this type of IP audit and due diligence, you need to have a person who has Chinese language and cultural knowledge on your side, if yourself do not read Chinese. This is a very important factor to have a successful IP audit and due diligence operation for your company. Do not rely on translations.

(1) Patent audit

China has a first-to-file system, unlike the U.S. If a U.S. patent filing does not designate China through the Patent Cooperation Treaty, you will have to file a national application within 12 months in order to claim the original U.S. filing date. Any publication worldwide would destroy novelty in China. There is no one-year grace period and you must file quickly.

There are three types of patents in China: invention, utility model and industrial design. When people in the U.S. talk about patents, they refer to invention patents. You should also keep in mind that China has a unique patent prosecution system. If you have to ascertain the good status of a pending Chinese patent application, you should be aware that a substantive examination

request with respect to an invention application must be filed with the Chinese Patent Office within 3 years after the pending application is published. Without this request, the application is deemed abandoned. So always instruct your Chinese patent agent to make a request in due course, even though there may not be enough funds in your account. When you do technology transfer, this piece of knowledge is particularly important in examining the status of pending Chinese patents at issue.

(2) Copyright audit

Copyright registration in China is not mandatory but if you want to enforce the copyright, you have to register your copyright in China first. The exception is foreign software programs, for which registration must be sought before the software product can be sold in China. Registration of copyright is the *prima facie* evidence of ownership. So if your company plans to enforce your copyright, whether it be an administrative action or a court action, registration is a must.

(3) Trademark audit

Trademark registration in China is also based on the first to file principle. Only well-known marks can enjoy cross-class protection if registered in China. Unregistered well-known marks may be protected for identical or similar products or services. Consecutive non-use of a registered trademark for 3 years makes it subject to cancellation. If your company is planning to do business in China, a carefully selected Chinese character mark is highly recommended because Chinese consumers are not used to Roman characters and your original English marks or corporate names may have some unpleasant or negative meanings if translated directly into Chinese language. If you do not choose a local mark, Chinese consumers may nevertheless give your product a Chinese mark based on their understanding, pronunciation or interpretation of your original English mark, which may dilute the strength of your mark.

These days, every company has a website. If you do business in China, you are recommended to have a Chinese domain name and set up a Chinese language website. When you do auditing, the contents of your web site should also be carefully examined.

(4) Trade secret audit

Trade secrets are protected under Chinese Anti-unfair Competition Law and a number of administrative regulations and local rules. You have to be able to carefully draft employment agreements, confidentiality agreements and non-compete agreements. Under Chinese labour law, an employer must pay confidentiality preservation fees to its employees, otherwise his or her confidentiality obligation expires upon termination of the employment. For non-compete restrictive covenants, you have to keep enforceability in mind. Under Chinese law, 3 years' restriction is acceptable but you have to define the confidential information carefully in your agreement. In order for an ex-employee to be bound by the non-compete clause, the employer must pay the compensation fees which are no less than 50% of the ex-employee's annual compensation received during his or her last year with the employer. Otherwise, the non-compete clause is deemed invalid. Different cities have different rules regarding non-compete compensation, so you will have to examine a particular locality's rules when you do auditing.

(5) Other issues

There are several *sui generis* intellectual property rights such as plant variety and semi-conductor layout design in China. Pharmaceutical IP protection and regulatory compliance are unique and are overseen by the State Food and Drug Administration in Beijing. As a foreign company, when you conduct IP acquisition or enforcement, you are required to designate an authorized agent if you do not have a business address in China.

2. Selection of local partners, licensees, distributors, retailers and wholesalers.

Due diligence for these Chinese parties are extremely important because these people are most likely to steal your technology and intellectual property if you do not exercise enough care. You need to educate these parties, warn these parties of potential grave consequences for infringing your IP rights, and carefully draft any business agreements with these parties. You also need to build a good relationship with these parties because they might work for you by detecting potential IP infringements and under certain circumstances they may even enforce your IP rights on your behalf in China.

3. IP enforcement.

Once you have acquired your IP in China, you must also formally make an effective enforcement plan. Without enforcement, you cannot maximize your intellectual property to the fullest extent in China.

(1) In house enforcement team

Enforcement has been regarded as a weak point in China's IP system, so first you have to have a team to do enforcement for you. If your company has presence in China already, you may consider having a local IP enforcement team to save costs. You should hire somebody who speaks Chinese and has had Chinese legal training and U.S. legal training in the local enforcement team. For junior enforcement personnel, you may hire local Chinese lawyers relatively inexpensively.

(2) Investigators

From time to time, you need to deal with local investigators to collect evidence or to conduct administrative raids jointly with your local IP enforcement team. You should be really careful about investigators in China. Since these firms do not have standards of ethics or any professional boundaries, they may provide phoney reports, false evidence or bribe local officials, which may subject your company to Foreign Corruptive Practice Act (FCPA) liabilities.

(3) Law firms

Local law firms can vary greatly in terms of professionalism, knowledge, quality and the costs. You need to get a good referral from people who have previously used these local Chinese law firms. They normally charge a fixed fee for doing legal work.

U.S. companies might be more used to using international law firms with China offices. In general, lawyers in these international firms have a better quality and understanding of your needs, but under the current Chinese rules, they are not allowed to directly offer legal advice regarding Chinese law and cannot appear before an administrative hearing and a court proceeding alone. So often, they will still engage a local firm to arrange certification credentials or appear jointly in a legal proceeding, which may increase your costs.

Under the Closer Economic Partnership Arrangement signed on July 1, 2003 between the Hong Kong Government and the Chinese Central Government, Hong Kong law firms are now allowed to offer non-litigation services in China. Like international firms, these Hong Kong firms are generally better and more expensive than local Chinese firms.

Both international and Hong Kong firms now employ certain China born and foreign educated and qualified lawyers. Foreign lawyers who are also Chinese citizens may appear before a Chinese court based on "citizen representation" provisions under the Chinese civil procedure. Therefore, you may experience situations where two U.S.-qualified lawyers argue an IP case in Chinese in a Chinese courtroom, in their personal capacity.

(4) Preset your enforcement objectives

When you do IP enforcement in China, you have to preset your objective whether it is marketing oriented, visibility oriented, government-relations oriented, injunctive relief oriented or monetary compensation oriented. Without setting a clear goal it is very difficult to satisfy your company's expectations.

(5) Administrative enforcement vs. litigation

Administrative enforcement is effective for straightforward trademark infringement, copyright infringement and design patent infringement. The agencies that conduct such administrative enforcement include the State Administration of Industry and Commerce (SAIC) and its local offices (so called local AICs), the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) and its local offices (so called Technical Supervision Bureaux TSBs). From time to time, Ministry of Public Security and its local Public Security Bureaux (PSB) also get involved in some high profile administrative actions. The administrative actions are fast and less expensive but no damages will be awarded to IP owners.

Civil litigation is suitable for complex intellectual property infringement, and in particular, invention and utility model infringement. You should be aware that the damages awards in China are still only a fraction of what you would expect in a U.S. IP case. But the good news is,

the attorneys' fees are also a fraction of what you would spend in a typical U.S. IP case. Court fees in China are fairly expensive, and are calculated according to the amount of damage (which an IP holder has to specify in the Complaint). Calculation is on a descending scale, somewhat like U.S. income tax rate. You should expect to pay 1%-1.5% in court fees.

The IP courts in China have significant variations in terms of resources, education, knowledge, fairness, transparency and capability. Forum shopping is very important. The IP courts in Beijing and Shanghai are the best in the country. From time to time, these courts would employ common law theories in determining a complicated case. Judges in these cities are much better trained and have a higher standard of professional conduct. If your company has a presence in Beijing or Shanghai or the products are sold in these cities or the infringement occurs in these cities, you may file directly at these cities' intermediate courts.

Criminal prosecution is applicable to certain trademark, copyright and patent infringements and can be initiated by the State or by the IP holder. Trademark criminal prosecution is more popular than for patents.

4. Research of Chinese IP laws

In acceding to the WTO, China has promised to make its IP law more transparent. There are now more Chinese websites publishing the most up-to-date Chinese laws, regulations and administrative rules. Almost every administrative agency publishes its administrative rules immediately but English translations are very limited, of poor quality and may have at least 6 months' delay. The following web links might be useful but the English contents are very limited:

- SIPO - <http://www.sipo.gov.cn>
- TMO - <http://www.tmo.gov.cn>
- NCA - <http://www.ncac.gov.cn>
- SAIC - <http://www.saic.gov.cn>
- MOFTEC (MOC) - <http://www.moftec.gov.cn>
- SFDA - <http://www.sfda.gov.cn>
- Others - <http://www.gov.cn>

5. Summary

Since you have come to this program, I suspect you will encounter China related IP issues shortly or you may have encountered certain issues already. So be aware of the issues I just briefly mentioned above. As a U.S. in-house attorney, you need to provide business savvy advice to your management regarding China IP strategy. In doing so, you need to be equipped with adequate knowledge of China IP by discussing with your local IP team, or outside IP counsel, or overseeing the actual transactions. Only after you have become knowledgeable and even an expert in this field, can your company have a more informed decision-making process, which is crucial to the success of your company in China market.

Patent litigation takes dramatic step forward

Catherine Sun¹

IP litigation in China has been transformed, particularly because of the TRIPs Agreement. Now what the system needs is foreign IP owners to start using it more, says judge Cheng Yongshun of the Beijing High Court, in an exclusive interview with Catherine Sun of Deacons, for MIP's China Guide

As a new member of the WTO, China has recently amended its major IP laws, including its Patent Law, to comport with the requirements of the TRIPs Agreement. And the Supreme People's Court is in the process of making IP litigation more compatible with the provisions of the TRIPs Agreement. The progress of China's patent litigation system is very impressive, considering the fact that patent law in China is only about two decades old.

The recent interview with Honourable Judge Cheng Yongshun, the deputy chief judge of Beijing High Court No 3 (Intellectual Property) Tribunal, conducted by Catherine Sun of Deacons's Hong Kong office, on September 27 2002, highlighted the development of China's IP litigation system. Unfortunately, as Cheng noted, very few foreign companies actually are taking advantage of it for lack of confidence in China's IP litigation system. The interview may provide a good outlook on the current patent litigation system, which makes it encouraging for foreign IP owners to litigate in China.

How many patent actions are started each year?

From 1997 to the first half of 2002, about 7846 patent actions were started. After June 2001, the IP tribunals were merged into civil tribunals, so the IP cases adjudicated by the courts have no long had "ZHI" (IP) prefixes on their case numbers. Statistics for IP cases after 2001 have become more difficult to obtain and may be inaccurate, since IP cases are numbered as regular civil cases. For the past three years, about 5000 IP cases were filed each year, and patent cases were about one fifth of the total. For year 2002, the number of patent cases will exceed 1000 (one thousand).

How many patent actions accepted by courts went to trial?

In China, "trial" can embody different concepts. Courts in China can resolve a patent case in three different ways by going to "trial": first, by judgement, second, by settlement, and third, by withdrawal. A common law trial is similar to the first resolution by judgement, but in China, the other two resolutions also involve multiple hearings presided over by the courts. Only a few cases would be settled without courts' intervention. (Therefore, Judge Cheng believes that more than 90% of patent actions go to trial ultimately.)

¹ The article was published in Managing Intellectual Property 2003 China IP Focus in January 2003. The author can be reached at catherine.sun@deacons.com.hk.

Who may assert a patent?

- patentee?
Yes
- assignee?
Yes
- exclusive licensee?
Yes
- non-exclusive licensees
Yes, but only if patent holders grants non-exclusive licensees the right to sue.

What is the average time from the filing of the action to the start of the trial?

For a first instance trial, according to the civil procedure rules, patent cases involving only domestic entities or persons, must be completed within six months. For an appeal, the completion time is three months. Two circumstances will delay the trial for one or more years: first, where a foreign entity is a party, and second, where the subject matter involves complex technology.

What is the average length of a trial?

On average a half day (four hours) trial is likely. Complex cases might take one to two days.

What is the average time from the close of the trial to the judgement?

Chinese courts try to hand down the judgements at the close of trial. But now it normally takes one to two months in patent cases. For complex patent cases, it might take two to three months.

What is the cost of a patent action?

Court fees depend on the damages claimed, according to a formula specified in the law, somewhat like the US income tax rate.

Attorneys' fees are negotiated by the parties based on the amount of damages, and normally are between 10% and 15%.

Who represents the parties - attorneys-at-law, patent agents, or both?

Attorneys-at-law; patent agents; foreign attorneys, who must be Chinese nationals, acting as citizen representatives, or Chinese citizens can represent the parties.

What is the percentage of patents found valid and infringed?

- Overall?
About 60%

- Where the patent owner is foreign?
Foreign patent holders file very few patent cases. In the last decade there have been no more 30 altogether. The infringement percentage should be higher than 60%.
- Where the defendant is foreign?
Only a few cases have been filed. Infringement should be around 60%.

What is the percentage of patents found invalid (revoked) at trial?

- Overall?
From 1988 to June 2001, there were 135 cases invalidating inventions were received, and about 20% of the cases were reversed, modified or remanded.
- Where the patent owner is foreign?
No obvious difference, about 20%
- Where the defendant is foreign?
About 20%

What is the percentage of patent judgments appealed to the Court of Appeals?

In China, settlements and withdrawals, adjudicated by trial courts, are consented to by the parties, thus parties normally do not appeal. Only judgements are appealed. About 30% of judgements are appealed.

What is the percentage of patent cases reversed in the Court of Appeals on validity?

About 20% to 30%.

What is the percentage of patent cases reversed in the Court of Appeals on infringement?

About 20% to 30%.

What is the cost of appeal of a patent decision?

Same as a trial.

Court fees depend on the damages claimed according to a formula specified by law, somewhat like U.S. income tax rate.

Attorneys' fees are negotiated by the parties based on amount of damages, and normally are 10% to 15%.

How many petitions are made to the Supreme People's Court regarding patent cases each year?

Very few IP cases are petitioned to the Supreme People's High Court each year, so patent cases are even fewer.

How many patent cases are heard by the Supreme People's Court in China?

None as a first instance court.

What precedential value (if any) does the court attach to judgments in other jurisdictions?

None. Judges are not bound by decisions or judgments rendered by sister courts, higher courts, or even the Supreme People's Court. Previous decisions or judgments are for reference only.

How are the damages decided in China?

Damages are generally based on actual damages suffered by patent holders or actual profits made by infringers, plus reasonable investigation costs. Attorneys' fees are rarely awarded. If none of the above can be quantified, the courts normally award a statutory damage of not more than \$60,000.

Are opinions sought as a defence to infringement or wilful infringement?

No. Since there are no enhanced damages (such as treble damages plus attorneys' fees) provisions for wilful infringement, accused or potential infringers do not normally seek non-infringement or invalidity opinions.

Is IP litigation insurance available in China?

No. I've never heard of it in China.

What procedures are there for depositions and discovery?

Exchange of evidence is available in China, but is not as extensive, formal and sophisticated as in the U.S. There are no deposition, production of documents and interrogatories procedures in China.

Are experts used and who appoints them?

Both parties and courts can appoint experts. Experts appointed by parties must be consented to by both parties. Courts do not have to consult parties when consulting or retaining experts.

Are validity and infringement heard at trial together or separately?

Validity and infringement are bifurcated.

Are damages decided at trial at the same time as liability?

If parties do not request bifurcation, damages and liability are decided at the same time.

What forms of alternative dispute resolution are used?

Alternative dispute resolution mechanisms such as reconciliation, mediation, arbitration and administrative adjudication are used frequently in China.

Rules of engagement for IP litigation

Catherine Sun¹

More and more international companies are launching IP litigation in China. Before they do so, they should be aware of what is and what isn't allowed in a Chinese courtroom, as Judge Xu, a prominent IP judge in Shanghai, explains in an exclusive interview with *MIP*

Catherine Sun of Deacons's Hong Kong office first met Honorable Judge Xu Jianchu, the chief judge of Shanghai High People's Court No 3 Civil Tribunal (Intellectual Property Tribunal) in 1996 at the US Court of Appeals for the Federal Circuit in Washington, DC, where she was a judicial extern, while Judge Xu was a visiting judge observing US IP litigation practice at the same court. They met again in Shanghai in March 2003 for this exclusive interview for *MIP*.

How many No 3 Civil Tribunals (IP tribunals) are there in Shanghai?

There are five IP tribunals in Shanghai. We have two intermediate people's courts, and each of them has a No 3 Civil Tribunal. My tribunal is in Shanghai High People's Court, and it is an appellate IP court. The other two IP tribunals are in district people's courts: one in Pudong new area, and the other in Huangpu district.

I remember that only intermediate people's courts have jurisdiction over patent cases. Why does Shanghai also have two IP courts at district people's court level?

The Supreme People's Court, the highest court of the country, once issued a notice, stating that patent cases at the first instance should be adjudicated by intermediate courts in the capital city of each province, and the four autonomous metropolitan cities (Beijing, Shanghai, Tianjin and Chongqing). The Supreme People's Court also designated a few non-capital cities' intermediate courts to have jurisdiction over patent cases, such as Qingdao, Dalian, Yantai, Wenzhou and Fushan, and non-capital cities in special economic zones, such as Shenzhen, Zhuhai, Shantou, and Xiamen. These courts also have exclusive jurisdiction over plant variety rights and layout designs of integrated circuits.

Several district courts, such as Beijing Haidian, Chaoyang, and Shanghai Pudong and Huangpu, are also designated as IP courts. But these courts only have jurisdiction over trade mark, copyright and unfair competition cases. No patent cases, or plant variety and layout design cases, can be accepted by these courts.

How many IP cases are accepted in Shanghai annually?

It used to be 600-700 per year. This year it might exceed 800.

¹ The article was published in *Managing Intellectual Property* in May 2003. The author can be reached at catherine.sun@deacons.com.hk.

Do you see an increase in IP cases involving foreign companies post-WTO?

Yes, but mainly involving trade mark, domain name, computer software and design patents in Shanghai. I spoke in 1996 at a Seattle conference and told the audience at that time that there was no single IP case filed by a US company in Shanghai, and only one IP case filed against a US company pre-1996. Now, there are many foreign companies litigating in Shanghai, such as Microsoft, Adobe and Unilever.

What differences do you see between the IP courts in Beijing and the IP courts in Shanghai?

There are not many patent cases involving inventions filed in Shanghai. Beijing gathers more talent in IP: research institutes, universities, foreign companies, and returnees. Beijing intermediate people's courts have exclusive jurisdiction over the validity and patentability appeals on the decisions made by the Patent Office, so the IP courts in Beijing have more experience and exposure in patent cases involving complex technology. Beijing intermediate people's courts also have exclusive jurisdiction over trade mark and copyright appeals from the relevant administrative offices.

How is a judgment finally made in an IP court?

Normally one judge, or an even number of judges are assigned to a case. They make decisions in IP cases. There is an adjudication committee in each court, formed by the chief judge of the IP Tribunal, and other senior ranked judges of that court. For an exceptional case where a unanimous decision is impossible or if the decision has significant impact in Shanghai, the adjudication committee would review a panel's decision and make the final decision.

What subject matter jurisdiction do Shanghai IP courts have?

Shanghai IP courts do not have jurisdiction over appeals on decisions made by the Chinese Intellectual Property Office, Trade Mark Office and Copyright Office in Beijing. Other than that, we take almost all other kinds of IP disputes.

What subject matter jurisdiction does your own court have?

We normally take appeals from the intermediate courts. But for cases with disputed amounts over Rmb100 million (about \$12 million), or with significant impact in Shanghai, we have discretion to take the case at first instance.

How can a plaintiff satisfy personal jurisdiction and venue requirements?

In order for Shanghai IP courts to accept a case, a defendant must reside or have places of business in Shanghai, the contract at issue must be performed in Shanghai, or infringing activities must be conducted in Shanghai.

Could a case be dismissed for lack of jurisdiction or improper venue?

Before an answer is filed, a defendant can challenge jurisdiction and/or venue. If the challenge is successful, we would transfer the case to a proper sister court. We do not dismiss a case outright for these reasons.

You have observed US-style discovery. Do you think China will eventually have that type of discovery in place?

I don't think so. It is too expensive for China.

What about adopting a quasi-discovery practice to provide at least some opportunities to the parties and litigants to discover the facts of the case?

It is possible. I actually have conducted some discovery experiments in the past. I have given the parties 30 days to exchange the evidence, and then we made trial exhibits lists on all evidence exchanged. During the hearing, each party can dispute the other party's exhibits. I have the discretion not to admit the disputed evidence.

When do you conduct such evidence exchange?

It is done before the trial, shortly after an answer is filed. If one party would like more time, a 30-day extension could be granted.

But I can imagine that parties would only produce documents that support their claims, not documents against their own position. How you deal with that?

That's right. Parties only submit documents in favour of their positions. One party cannot compel the other party to produce documents. But if one party requests the other party to produce certain documents, and the other party says they do not have them, the documents are deemed to be nonexistent. The refusing party cannot later use these documents to advance their position.

How do you prevent destruction of evidence?

If one party can prove that the other party has destroyed certain documents, then the court may draw an unfavourable inference toward that party. The court can also refer an evidence destruction case to prosecutors for criminal action, but it has no authority to sanction the lawyers or the party directly.

Would it help if China imposes and enforces stricter rules of professional conduct regulating lawyers?

Definitely. We judges have a code of professional conduct. Several years ago, a judge in Shanghai was arrested for receiving bribes, but the several lawyers who offered bribes walked away. There are two different systems regulating the conduct of lawyers and judges. Judges have no right to sanction lawyers directly in China.

Is the concept of attorney-client privilege or attorney work product recognized in China?

Since China does not have formal discovery, these principles are not particularly useful in litigation. Courts cannot compel the parties to produce evidence, let alone the attorneys.

Are interrogatories, requests for admission and depositions available in China?

No.

Is it possible to adopt certain mechanisms to offer parties other discovery tools? For instance, to provide each party limited numbers of interrogatories and requests for admissions, or to provide court-supervised depositions to key witnesses?

Yes, but there is nothing addressing these mechanisms in Chinese procedural and evidential rules. So maybe the Supreme People's Court should issue some sort of judicial interpretation in order to have nationwide effect. It could be done through the stipulation of the parties, but judges need to know exactly how to do it.

Do you think common law discovery training programmes for judges would be helpful?

Yes, that would be useful. There is a judge training centre in Shanghai which organizes training programmes and deals with interested foreign parties. A lot of my younger colleagues have a better grasp of English, so they are very eager to learn new things.

What do judges do on a daily basis?

Fifty per cent of my time is spent on cases, and 50% is spent on meetings, travel, talks and other administrative matters.

Do you think it is possible to select judges from experienced lawyers in China?

Right now there are several unsolved issues: first, many judges who do not have a law degree or previous legal training are already in the system. It may take some time to phase these people out. Second, right now all judges, prosecutors and lawyers must pass national unified judicial exams, in order to become a judge, a prosecutor or a lawyer. But these three professions are not freely transferable. When the system allows judges and public prosecutors to switch career more easily, it might be possible. Third, lawyers are a lot better paid than judges and prosecutors, so there is no incentive for lawyers to become judges.

I have heard sometimes that a panel also comprises a "people's jury" in an IP case, can you tell me who are people's jurors?

There is no jury system in China. The people's jurors are completely different from common law jurors. There is a list of people's jurors who are recommended by the people's congress, and people's political consultative conference. These people when asked to sit in a panel would act just like a judge. Normally they have a technical background, industry experience or a law

degree, and act more like an expert adjudicator. For instance, if there is a copyright case at issue, we may ask a writer to serve as a people's juror sitting on the bench. These people are not full-time employees of the courts, but are paid a stipend for providing such service to the courts. The people's jurors are only designated to hear cases of first instance in district, intermediate, high courts and the Supreme People's Courts.

Do you allow foreign lawyers to appear before your court?

If a foreign lawyer appears alone as a lawyer, we would try to persuade the party to retain a Chinese lawyer. A foreign lawyer definitely can come to a hearing, if it is a public hearing.

If a foreign lawyer is also an employee of a party which is a foreign company or a foreign investment enterprise in China, that lawyer can appear not as a lawyer, but as an employee representing that company.

If a foreign lawyer is a Chinese citizen, he or she may appear not as a lawyer, but as a citizen. This is so called "citizen representation" under the rules of civil procedure.

Do you allow ex parte communication by counsel?

No. We have a judge's code of conduct, prohibiting *ex parte* communication. Otherwise judges are subject to disciplinary sanctions.

What are the remedies for the adversely affected party where the opposing party made ex parte communication with the court?

The adversely affected party may request to replace the judge who was contacted by the other party.

Do you give substantial weight to opinions rendered by a court-appointed authenticator or expert?

The authenticator's opinion or expert's opinion is part of the indirect evidence, I would have to review and weigh all the evidence presented before I could make a decision.

What are the differences between an authenticator and an expert?

An authenticator is a court-certified witness who authenticates the evidence. There is a list of judicially-recognized authenticating authorities. Authenticators are associated with these authorities and retained by the court or parties to issue authenticating opinions.

Experts are not court certified. Either or both the court and the parties can retain experts. Experts normally provide testimony or written reports on complex technology issues. There is no judicial recognized list of experts. The losing party has to pay the fees of a court appointed authenticator or expert.

Can parties challenge the authenticator's opinion or expert's opinion?

Yes. The parties can challenge their qualifications and conclusions.

Is a damages expert used in China IP litigation?

This is not popular. The court sometimes may seize a party's financial records for auditing, upon written request by the other party. The auditing entity normally is the court-appointed expert.

Sometimes, the parties apply to the court to preserve certain evidence of the opposing side. What kind of evidence submitted is sufficient to warrant such evidence preservation?

We understand that the requesting party does not have the evidence to be preserved when making such a request, so evidence submitted should reasonably persuade the court that the other side has such evidence and it is likely to be destroyed. But the evidence submitted must be legally obtained. We once dismissed an evidence preservation request based on an illegal acquisition of the evidence. The requesting party hired a Hong Kong investigator to conduct a thorough investigation of the opposing party in Shanghai, and submitted the investigation report to the court. Because Hong Kong investigators cannot conduct business in Shanghai, we dismissed the request. Had the investigation been done by a PRC company, we would have approved the evidence preservation request.

Are statutory damages granted frequently?

Yes.

Do you think a high damages award is possible in China?

Yes, damages are subject to proof. Since there are not many high-value patents litigating in China, no cases have provided an adequate basis for rendering a high damages award.

© Deacons 2003. The author is a lawyer with the firm in Hong Kong

**DRAFT EQUITY JOINT VENTURE CONTRACT BETWEEN
BEIJING PETROCHEMICAL COMPANY AND
ULYSSES CHEMICAL COMPANY
(FOR DISCUSSIONS AT ACCA ANNUAL MEETING COURSE 803 ONLY)**

October 10, 2003, San Francisco

Catherine Sun Copyright ©2003

CHAPTER 1

Article 1

GENERAL PROVISIONS

In accordance with the "Law of the People's Republic of China on Sino-Foreign Equity Joint Ventures" and other relevant Chinese Laws and regulations, Beijing Petrochemical Company and Ulysses Chemical Company, adhering to the principle of equality and mutual benefit and through friendly consultations, agree to jointly invest and to set up a joint venture enterprise in Tangshan, Hebei Province, the PRC.

CHAPTER 2

PARTIES OF THE JOINT VENTURE

Parties of this contract are as follows: Beijing Petrochemical Company (hereinafter referred to as "Party A"), registered with the State Administration of Industry and Commerce in China, and its legal address is at No. 88, Yanshan Road, Shijing Shan District, Beijing 100036, China.

Legal representative: Wang Guming

(Position) General Manager

(Nationality) PRC

Ulysses Chemical Company (hereinafter referred to as "Party B") registered with Delaware, U.S.A. Its principal place of business is at 10 Liberty Boulevard, Cincinnati, OH 45276, U.S.A.

Legal representative: Bill Calore

(Position) General Counsel

(Nationality) U.S.A.

CHAPTER 3

Article 2

ESTABLISHMENT OF THE JOINT VENTURE COMPANY

In accordance with the "Law of the People's Republic of China on Sino-Foreign Equity Joint Ventures" and other relevant Chinese laws and regulations, both parties of the joint venture agree to set up a joint venture limited liability company (hereinafter referred to as the "the Joint Venture Company").

Article 3

The form of the Joint Venture Company is a Limited Liability Company.

The name in foreign language is Ulysses Petrochemical Company

The legal address of the joint venture company is at No. 1 Earthquakefree Road, Tangshan 063305, Hebei Province, China.

Article 4

All activities of the Company shall be governed by the laws, decrees and pertinent rules and regulations of the PRC.

Article 5

The organization form of the Company is a limited liability company. Each party of the Company is liable to the Company within the limit of the capital subscribed by it. The profits, risks and losses of the Company shall be shared by the parties in proportion to their contributions of the registered capital.

CHAPTER 4

THE PURPOSE, SCOPE AND SCALE OF PRODUCTION AND BUSINESS

Article 6

The purpose of the parties to the joint venture company is to enhance the economic corporation and technical exchanges, to improve the product quality, develop new products, and gain competitive position in the world market in quality and price by adopting advanced and appropriate technology and scientific management methods; so as to raise economic results and ensure satisfactory economic benefits for each investor.

Article 7

The productive and business scope of the Company is to produce Epoxy resins, market and sales of the product in Asia and worldwide, and to study and develop new products.

Article 8

The production scales of the Company are as follows:

1. The production capacity after being put into operation is 10,000 metric tons.
2. The production scale may be increased to 41, 000 metric tons with the development of the production and operation.

CHAPTER 5**TOTAL AMOUNT OF INVESTMENT AND THE REGISTERED CAPITAL****Article 9**

The total amount of investment in the Company is RMB1 billion Yuan (or a foreign currency agreed upon by both parties).

Article 10

Investment contributed by the parties is RMB1 billion Yuan, which will be the registered capital of the Company; of which: Party A shall pay RMB490,000,000 Yuan, account for 49%; Party B shall pay RMB510,000,000 Yuan, account for 51%.

Article 11

Both Party A and Party B will contribute the following as their investment:

Party A:

Cash: RMB100,000,000 Yuan,

Machines and equipment RMB 90,000,000 Yuan,

Premises of its factory in Tangshan, RMB200,000,000 Yuan,

The right to use the site, RMB100,000,000 Yuan

Industrial property [] RMB,

Others [] RMB,

Total RMB490,000,000 in all.

Party B:

Cash: RMB210,000,000,

Machines and equipment RMB100,000,000,

Premises [] RMB,

The right to use the site [] RMB,

Industrial property RMB200,000,000,

Others [] RMB,

Total RMB510,000,000 in all.

Article 12

The registered capital of the Company shall be paid in two instalments by Party A and Party B according to their respective proportion of their investment.

Each instalment shall be as follows: 50% upon signing the Agreement, 50% upon registration.

Article 13

In case any party to the joint venture intends to assign all or part of his investment subscribed to a third party, consent shall be obtained from the other party to the joint venture, and approval from the examination and approval authority is required.

When one party to the joint venture assigns all or part of his investment, the other party shall have pre-emptive right.

CHAPTER 6

RESPONSIBILITY OF EACH PARTY TO THE JOINT VENTURE

Article 14

Party A and Party B shall be respectively responsible for the following matters:

Responsibility of Party A:

Handling application for approval, registration, business license and other matters concerning the establishment of the Company and liaison with the relevant departments in charge of China;

Applying for the right to the use of the premises and other engineering facilities of the Company;

Providing cash, machinery and equipment and premises in accordance with Article 11;

Assisting Party B for processing import custom declarations for the machinery and equipment contributed by Party B as investment and arranging the transportation within the Chinese territory;

Assisting the Company in purchasing or leasing equipment, materials, raw materials, articles for office use, means of transportation and communication facilities etc;

Assisting the Company in contacting and settling the fundamental facilities such as water, electricity, transportation etc;

Assisting the Company in recruiting Chinese management personnel, technical personnel, workers and other personnel needed;

Assisting foreign workers and staff in applying for the entry visa, work permit and processing their travelling affairs.

Responsible for handling other matters entrusted by the Company.

Responsibility of Party B:

Providing cash, machinery and equipment, industrial property in accordance with Article 11, and responsible for shipping capital goods such as machinery and equipment etc contributed as part of the investment, to a Chinese port;

Handling other matters entrusted by the Company, such as selecting and purchasing machinery and equipment outside China, etc;

Providing needed technical personnel for installing, testing and the trial production of the equipment as well as the technical personnel for production and inspecting;

Training the technical personnel and workers for the Company;

In case party B is the licensor, it shall be responsible for the stable production of qualified products of the Company in the light of design capacity within the stipulated period;

Responsible for other matters entrusted by the Company.

CHAPTER 7

TRANSFER OF TECHNOLOGY

Article 15

Both Party A and Party B agree that a technology transfer agreement shall be signed between the Company and the Party B (or a third party) so as to obtain advanced production technology needed for realizing the production and operation purpose and the production scale stipulated in Chapter 4 in the contract, including product designing, technology of manufacturing, means of testing, materials prescription, standard of quality and training of personnel, and so on.

Article 16

Party B offers the following guarantees on the transfer of technology;

1. Party B guarantees that the overall technology such as the designing, technology of manufacturing, technology process, tests and inspection of products of Ulysses provided to the Company must be integrated, precise and reliable. It is to meet the requirement of the Company's operational purposes, and be able to obtain the standard of production quality and production capacity stipulated in the contract;
2. Party B guarantees that the technology stipulated in this contract and the technology transfer agreement shall be fully transferred to the Company, and pledges that the provided technology should be truly advanced among the same type of technology of Party B, the model, the specification and quality of the equipment are excellent and it is to meet the requirement of technology operation and practical usage
3. Party B shall work out a detailed listing of the provided technology and technology services at various stages as stipulated in the technology transfer agreement to be an appendix to the contract, and will guarantee its performance;
4. The drawings, technological conditions and other detailed information are part of the transferred technology and shall be offered on time;
5. Within the validity period of the technology transfer agreement, Party B shall provide the Company with the improvement of the technology and the improved information and technological materials in time, and shall not charge separate fees;
6. Party B shall guarantee that the technological personnel and the workers in the Company can master all the technology transferred within the period stipulated in the technology transfer agreement.

Article 17

In case Party B fails to provide equipment and technology in accordance with the stipulations in this contract and in the technology transfer agreement or in case any deceiving or concealing actions are found, Party B shall be responsible for compensating the direct losses to the Company.

Article 18

The technology transfer fee shall be paid in royalties. The royalty rate shall be 10% of the net sales value of the products actually collected.

Article 19

The terms of the technology transfer agreement signed by the Company and Party B is 5 (no longer than ten) years. After the expiration of the technology transfer agreement, the Company shall have the right to use, research and develop the imported technology continuously.

CHAPTER 8**SELLING OF PRODUCTS****Article 20**

The products of the Company will be sold both on Chinese market and on overseas market, the export part counts for 70%, 30% for domestic market.

Article 21

Products may be sold on overseas market through the following channels:

The Company may directly sell its products on the international markets which accounts for 60%.

The Company may sign sales contract with the Chinese foreign trade companies, entrusting them to be the sales agencies or exclusive sales agencies, which account for 20%.

The Company may entrust Party B to sell its products, which accounts for 20%.

Article 22

The joint venture products to be sold in China may be handled by the Chinese materials and commercials departments by means of agency or exclusive sales, or may be sold by the Company directly.

Article 23

In order to provide maintenance service to the products sold both in China and abroad, the Company may set up sales branches for maintenance services both in China or abroad subject to the approval of the relative China department.

Article 24

The trademark of the joint venture products is Ulysses and related marks in English and/or Chinese.

CHAPTER 9**THE BOARD OF DIRECTORS****Article 25**

The date of registration of the Company shall be the date of the establishment of the Board of Directors of the Company.

Article 26

The board of Directors are composed of 5 directors, of which 2 shall be appointed by Party A, 3 by Party B. The Chairman of the Board shall be appointed by Party A, and its Vice-Chairman by Party B. The term of office for the directors, Chairman and Vice-Chairman is four years, their term of office may be renewed if continuously appointed by the relevant Party.

Article 27

The highest authority of the Company shall be its Board of Directors. It shall decide all major issues (the main contents shall be listed in the light of Article 36 of the Regulations for the Implementation of the Joint Venture Law) concerning the Company. Unanimous approval shall be required before any decisions are made concerning major issues. As for other matters, approval by majority or a simple majority shall be required.

Article 28

The Chairman of the Board is the representative of the Company. Should the Chairman be unable to exercise his responsibility for some reasons, he shall authorize the Vice-Chairman or any other director to represent the Company temporarily.

Article 29

The Board of Directors shall convene at least one meeting every year. The meeting shall be called and presided over by the Chairman of the Board. The Chairman may convene an interim meeting based on a proposal made by more than one third of the total number of Directors. Minutes of the meeting shall be placed on file.

CHAPTER 10

BUSINESS MANAGEMENT OFFICE

Article 30

The Company shall establish a Management Office which shall be responsible for its daily management (hereinafter "The Management Office"). The Management Office shall have a General Manager, appointed by party B, 3 Deputy General Manager, 2 appointed by Party A, 1 By Party B. The General Manager and Deputy General Managers whose terms of office are 4 years shall be appointed by the Board of Directors.

Article 31

The responsibility of the General Manager is to carry out the decisions of the Board Meeting and organize and conduct the daily management of the Company. The Deputy General Managers shall assist the General Manager in his work.

Several Departmental Managers may be appointed by the Management Office, they shall be responsible for the works in various departments respectively, handle matters handed over by the general Manager and Deputy General Managers and shall be responsible to them.

Article 32

In case of misconduct or serious omission of duty on the part of the General Manager and Deputy General Managers, the Board of Directors shall have the power to dismiss them at any time.

CHAPTER 11

PURCHASE OF EQUIPMENT

Article 33

In its purchase of raw materials, fuel, parts, means of transportation and articles for office use, and so on, the Company shall give first priority to purchase in China where conditions are the same.

Article 34

In case the Company entrusts Party B to Purchase equipment on the overseas market, persons appointed by Party A shall be invited to take part in the purchasing.

CHAPTER 12

PREPARATION AND CONSTRUCTION

Article 35

During the period of preparation and construction, a preparation and construction office (hereinafter "the Preparation and Construction Office") shall be set up under the Board of Directors. The Preparation and Construction Office shall consist of 5 persons, among which 3 persons shall be from Party A, 2 persons from Party B. The Preparation and Construction Office shall have one Manager recommended by Party B, and one Deputy Manager by Party A. The Manager and Deputy Manager shall be appointed by the Board of Directors.

Article 36

The Preparation and Construction Office is responsible for the following construction work: examining the designs of the project, signing the project construction contract, organizing the purchasing and inspecting of relative equipment etc., working out the general schedule of project construction, compiling the expenditure plans, controlling project financial payments and final accounts of the project, drawing up the managerial methods and keeping and filing documents, drawing, files and materials, etc., during the construction period of the project.

Article 37

A technical group (hereinafter "the Technical Group") with several technical personnel appointed by Party A and Party B shall be organized. The Technical Group, under the leadership of the Preparation and Construction Office, is in charge of the examination, supervision, inspections, testing, checking and accepting, and performance checking for the project design, the quality of the project, the equipment and materials and the imported technology.

Article 38

After approval by both parties, the establishment, remuneration and the expenses of the staff of the Preparation and Construction Offices shall be covered in the project budget.

Article 39

After having completed the project and finishing the turning over procedures, the Preparation and Construction offices shall be dissolved upon the approval of the Board of Directors.

CHAPTER 13

LABOUR MANAGEMENT

Article 40

Labour contracts covering the recruitment, employment, dismissal and resignation, wages, labour insurance, welfare, rewards, penalties and other matters concerning all staff and workers of the Company shall be drawn up between the Company and the Trade Union of the Company as a whole, or the individual employees in the Company as a whole, or individual employees in accordance with the "Regulations of the PRC on Labour Management in the Joint Venture Using Chinese and Foreign Investment and its Implementing Rules".

Article 41

The appointment of high-ranking administrative personnel recommended by both Parties, their salaries, social insurance, welfare and the standard of travelling expenses etc. shall be decided by the Board of Directors.

CHAPTER 14

TAXES, FINANCE AND AUDIT

Article 42

The Company shall pay taxes in accordance with the stipulations of Chinese laws and other relative regulations.

Article 43

Staff members and workers and workers of the Company shall pay individual income tax accordance to the "Individual Income Tax Law of the PRC".

Article 44

Allocations for reserve funds, expansion funds of the Company and welfare funds and bonuses for staff and workers shall be set aside in accordance with the stipulation in the "Law of the PRC on Sino-Foreign Equity Joint Ventures". The annual proportion of allocations shall be decided by the Board of Directors according to the business situation of the Company.

Article 45

The fiscal year of the Company shall be from January 1 to December 31. All vouchers, receipts, statistics statements and reports shall be written in Chinese.

Article 46

Financial auditing and examination of the Company shall be conducted by an auditor registered in China and reports shall be submitted to the Board of Directors and the General Manager.

In case Party B considers it is necessary to employ a foreign auditor registered in another country to undertake annual financial checking and examination, Party A shall give its consent. All the expenses thereof shall be borne by Party B.

Article 47

In the first three months of each fiscal year, the General Manager shall prepare previous year's balance sheet, profit and loss statement and proposal regarding the disposal of profits, and submit them to the Board or Directors for examination and approval.

CHAPTER 15

DURATION OF THE JOINT VENTURE

Article 42

The duration of the Company shall be 50 years (hereinafter "the Duration"). The establishment of the Company shall start from the date on which the business license of the Company is issued.

An application for the extension of the duration, proposed by one of the parties and unanimously approved by the Board of Directors, shall be submitted to the Ministry of Foreign Economic Relations and Trade (or the examination and approval authority entrusted by it) six months prior to the expiry date of the joint venture.

CHAPTER 16

THE DISPOSAL OF ASSETS AFTER THE EXPIRATION OF THE DURATION

Article 49

Upon the expiration of the duration, or termination before the date of expiration of the joint venture, liquidation shall be carried out according to the relevant law. The liquidated assets shall be distributed in accordance with the proportion of investment contributed by Party A and Party B.

CHAPTER 17

INSURANCE

Article 50

Insurance policies of the Company on various kinds of risks shall be underwritten with the PRC. Types, the value and duration of insurance shall be decided by the Board of Directors in accordance with the stipulations of the PRC's Insurance Company of China.

CHAPTER 18

THE AMENDMENT, ALTERATION AND DISCHARGE OF THE CONTRACT

Article 51

The amendment of the contract or other appendices shall come into force only after the written agreement signed by Party A and Party B and approved by the original examination and approval authority.

Article 52

In case of inability to fulfil the contract or continue operation due to heavy losses in successive years as a result of force majeure, the duration of the joint venture and the contract shall be terminated before the time of expiration after unanimously agreed upon by the Board of Directors and approved by the original examination and approval authority.

Article 53

Should the Company be unable to continue its operations or achieve the business purposes stipulated in the contract due to the fact that one of the contracting Parties fails to fulfil the obligations prescribed by the contract and articles of association, that Party shall be deemed as having unilaterally terminated the contract. The other Party shall have the right to terminate the contract in accordance with the provisions of the contract after approved by the original examination and approval authority as well as to claim damages. In case Party B of the Company agrees to continue the operation, the Party who fails to fulfil the obligations shall be liable to the economic losses thus caused to the Company.

CHAPTER 19

LIABILITIES FOR BREACH OF CONTRACT

Article 54

Should either Party A or Party B fail to pay on schedule the contribution in accordance with the provisions defined in Chapter 5 of this contract, the breaching party shall pay to the other party 5% of the contribution starting from the first month after exceeding the time limit. Should the breaching party fail to pay after three (3) months, 10% of the contribution shall be paid to the other party, who shall have the right to terminate the contract and to claim damages from the breaching party in accordance with the stipulations in Article 53 of the contract.

Article 55

Should all or part of the contract and its appendices be unable to be fulfilled owing to the fault of one Party, the breaching Party shall bear the responsibilities thus caused. Should it be the fault of both parties, they shall bear their responsibilities according to actual situations.

Article 56

In order to guarantee the performance of the contract and its appendices, both Party A and Party B shall provide each other the bank guarantees for the performance of the contract.

CHAPTER 20**FORCE MAJEURE****Article 57**

Should either Parties to the contract be prevented from executing the contract due to force majeure, such as earthquake, typhoon, flood, fire, SARS and war and other unforeseen events and their happening and consequences are unpreventable and unavoidable, the prevented Party shall notify the other Party by cable without delay, and within fifteen (15) days thereafter provide detailed information of the events and a valid document for evidence issued by the relevant Public Notary organization for explaining the reason of its inability to execute or delay the execution of all or part of the contract. Both Parties shall, through consultations, decide whether to terminate the contract or to exempt the part of the obligations for implementation of the contract or whether to delay the execution of the contract according to the effects of the events on the performance of the contract.

CHAPTER 21**APPLICABLE LAW****Article 58**

The formation of this contract, its validity, interpretation, execution, and settlement of disputes shall be governed by the related laws of the PRC.

CHAPTER 22**SETTLEMENT OF DISPUTES****Article 59**

Any dispute arising from the execution of, or in connection with, this contract shall be settled through friendly consultations between both Parties. In case no settlement can be reached through consultations, the dispute shall be submitted to the China International Economic and Trade Arbitration Commission (CIETAC) for arbitration in accordance with its rules of procedure. The arbitrate award is final and binding upon both parties. Arbitration shall take place in China.

Article 60

During the arbitration, the contract shall be executed continually by both parties except for matters in dispute.

CHAPTER 23**LANGUAGE****Article 61**

The contract shall be written in Chinese and in English. Both languages are equally valid. In the event of any discrepancy between the two versions, the Chinese version shall prevail.

CHAPTER 24**EFFECTIVENESS OF THE CONTRACT AND MISCELLANEOUS ITEMS****Article 62**

The appendices in accordance with the principles of this contract are integral part of this contract, including: the project agreement, the technology transfer agreement, the sales agreement and other agreements as pertinent.

Article 63

The contract and its appendices shall come into force beginning from the date of approval of the Ministry of Commerce of the PRC, or it's entrusted examination and approval authority.

Article 64

Should notice in connection with any party's rights and obligations be sent by either Party A or Party B by e-mail, telegram, telex, or facsimile, the written notices by mail or courier shall be followed afterwards. The legal addresses of Party A and Party B listed in this contract shall be the posting addresses.

Article 65

The contract is signed in Beijing of China by the authorized representative of both parties on _____.

List of sample documents

PRC trade mark application

1. Form of Power of Attorney
2. Sample search form
3. Sample application form
4. Sample Notice of Opposition

Hong Kong trade mark application

5. Form of Power of Attorney
6. Sample search form
7. Sample application form
8. Sample Notice of Opposition

Patent application

9. Form of Power of Attorney for Chinese patent application
10. Form of Power of Attorney for PCT applications
11. Entry of China national stage form
12. Sample Notice of Publication form
13. Sample Certificate

PRC enforcement

14. Sample TSB seizure report and punishment decision
15. Sample AIC seizure report and punishment decision
16. Sample judgment
17. Form of Power of Attorney - TM agent
18. Form of Power of Attorney (2 forms) - Agent Ad Litum

(1)

委托书 POWER OF ATTORNEY

我/我公司 _____，是 _____ 国国籍
/依 _____ 国/地区法律组成。现委托 _____ 在中华人民
共和国代理 _____ 商标的如下“√”事宜：

I/We Ulysses Chemical Company, a citizen of / a corporation organized and
existing under the laws of Delaware, U.S.A., hereby entrust _____ to
act as my / our agent in the People's Republic of China for the following matter(s) marking with
“√” in relation to trademark : Ulysses

- | | |
|--|---|
| <input checked="" type="checkbox"/> 商标注册申请 | - application for trademark registration |
| <input type="checkbox"/> 商标异议申请 | - opposition |
| <input type="checkbox"/> 变更商标申请人/注册人名义/地址申请 | - modification of name/address of registrant/applicant |
| <input type="checkbox"/> 删减商品/服务项目申请 | - deletion of goods/service item |
| <input type="checkbox"/> 变更商标代理人申请 | - change of trademark agent |
| <input type="checkbox"/> 更正商标申请/注册事项申请 | - correction of content in trademark application/registration |
| <input type="checkbox"/> 转让申请/注册商标申请 | - recordal of assignment of application/registration |
| <input type="checkbox"/> 商标续展注册申请 | - renewal of registration |
| <input type="checkbox"/> 撤销连续三年停止使用注册商标申请 | - cancellation of trademark registration based on non-use
for a consecutive 3 years |
| <input type="checkbox"/> 商标注销申请 | - removal of registered trademark |
| <input type="checkbox"/> 注册人死亡/终止注销商标申请 | - application for cancellation of registration
based on the registrant's death/termination |
| <input type="checkbox"/> 补发变更/转让/续展证明申请 | - re-issuance of modification/assignment/renewal certification |
| <input type="checkbox"/> 补发商标注册证申请 | - re-issuance of trademark registration certificate |
| <input type="checkbox"/> 提供商标注册证明申请 | - issuance of trademark registration certification |
| <input type="checkbox"/> 提供优先权证明文件申请 | - application for issuing priority document |
| <input type="checkbox"/> 商标使用许可合同备案申请 | - recordal of trademark license contract |
| <input type="checkbox"/> 商标使用许可合同备案变更/提前终止申请 | - recordal of modification/termination before the due date
of trademark license contract |
| <input type="checkbox"/> 商标专用权质押登记申请 | - recordal of pledge of trademark right |
| <input type="checkbox"/> 撤回商标注册申请申请 | - withdrawal of trademark application |
| <input type="checkbox"/> 撤回商标异议申请 | - withdrawal of trademark opposition |
| <input type="checkbox"/> 商标评审事宜 | - trademark review and adjudication matters |
| <input type="checkbox"/> 其他 | - others |

委托人： _____

Applicant's name: Ulysses Chemical Company

委托人地址： _____

Applicant's address: _____

签章： _____

Signature and Title: _____ Date: _____

(2)

商 标 查 询 单

代理组织代码: _____

查询文号: _____

查询方式: 直接送交(加急 普通) 传真(加急 普通) 邮递(普通)

商标(规范名称)		商 品			
		类别		群组	
代理机构	名称				
公章	地址				
	传真号		联系人		
	备注:				

查 询 报 告

- 目前尚未有在先权利商标与所查商标相同
- 目前有如下在先权利商标与所查商标相同或相似

	商标	类似群组	注册号	初审公告期
1.				
2.				
3.				
4.				

备注:

此报告以查询之日起已审定或已注册的商标为限, 仅供参考, 不具法律效力。

★此查询单只限一类一标。

计价	
----	--

(3)-1

商标注册申请书

申请人名称（中文）：

（英文）： Ulysses Chemical Company

申请人国籍： 美国

申请人地址（中文）：

（英文）：

是否共同申请： 是 否

代理组织名称：

商标种类： 一般 集体 证明 立体 颜色

商标说明：

优先权初次申请国：

申请日期：

申请号：

类别：

商品/服务项目：

（附页： 页）

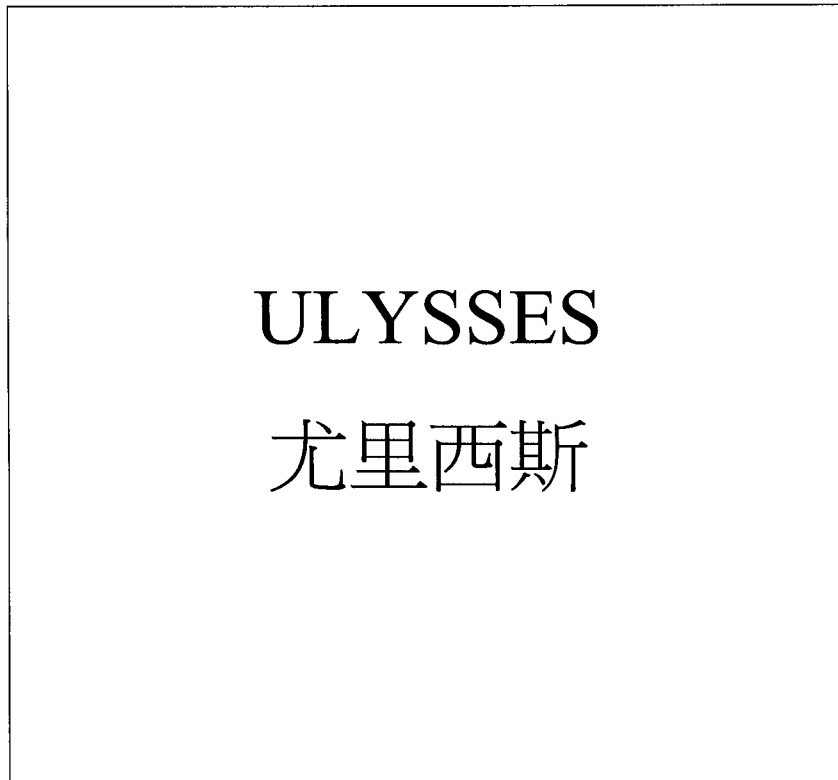
申请人章戳（签字）：

代理组织章戳：

代理人签字：

(3)-2

将一张商标图样贴在格内，另附五张图样。指定颜色的附着色图样五张和黑白墨稿一张。图样应不大于 10 x 10cm，不小于 5 x 5cm。



- 注：
- 1、未委托代理的，不需填写代理项目。
 - 2、申请商标的种类在“商标种类”一栏的方框中选择（一般、集体、证明三项只能选其一，立体和颜色可以多选）。
 - 3、共同申请注册同一商标的，申请人名称/地址栏填写代表人名称/地址，同时在“是否共同申请”一栏选择“是”，其他共同申请人在申请表附页填写名称（不需要填写地址）。
 - 4、收费标准：受理商标注册费 1000 元，10 个商品/服务项目以上（不含 10 个），每超过一个，另加收 100 元。受理集体商标注册费 3000 元，受理证明商标注册费 3000 元。
 - 5、“商标说明”一栏填写内容：商标图样外文的含义、特殊字体的文字表述、立体/颜色商标的说明。

(4)

商标异议申请书

被异议商标：

类别：

初步审定号：

初步审定公告期：

初步审定公告日期：

被异议人名称：

被异议人地址：

邮政编码：

被异议人代理组织名称：

异议人名称：

异议人地址：

邮政编码：

联系人：

电话（含地区号）：

传真（含地区号）：

异议人代理组织名称：

申请人章戳（签字）：

代理组织章戳：

代理人签字：

- 注：
1. 异议理由和证明材料另附。
 2. 未委托代理的，不需填写代理栏目。
 3. 收费标准：商标异议费 1000 元。
 4. 马德里国际注册商标，初步审定号为国际注册号，填写时在注册号加字母“G”以示区分。
审公告期为国际注册公告期，初审公告日期为国际注册公告日期。
 5. 若被异议商标为共同申请的商标，被异议人名称/地址权必须填写代表人的名称/地址。

<p>TRADE MARKS ORDINANCE (CHAPTER 43)</p>	<p>Form TM-No. 50</p> <p>No Fee</p>										
<p>Authorization of Agent where an agent is appointed during the course of proceedings before the Registrar or where one agent is substituted for another</p>	<p>FOR OFFICIAL USE</p>										
<p>1. Registration or Application No. and Class No. of the mark for which authorization in Part 4 is given</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 60%; border: none; text-align: center;">Registration or Application No.</td> <td style="width: 40%; border: none; text-align: center;">Class No.</td> </tr> </table>	Registration or Application No.	Class No.									
Registration or Application No.	Class No.										
<p>2. Name and address of applicant, proprietor or person who is authorizing agent</p> <p>Name Ulysses Chemical Company</p> <p>Address 10 Liberty Boulevard, Cincinnati, OH 45276, U.S.A.</p>											
<p>3. Agent's details</p> <p>Name</p> <p>Address</p>											
<p>Agent's own reference</p>											
<p>4. The agent is authorized to act in the following</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 80%;">Application and registration</td> <td style="width: 20%; text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>All post registration matters</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Registered User procedures</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Opposition to the application shown at Part 1</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Application for rectification of the register in respect of the mark shown at Part 1 by a person who is not the registered proprietor of the mark</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>		Application and registration	<input type="checkbox"/>	All post registration matters	<input type="checkbox"/>	Registered User procedures	<input type="checkbox"/>	Opposition to the application shown at Part 1	<input type="checkbox"/>	Application for rectification of the register in respect of the mark shown at Part 1 by a person who is not the registered proprietor of the mark	<input type="checkbox"/>
Application and registration	<input type="checkbox"/>										
All post registration matters	<input type="checkbox"/>										
Registered User procedures	<input type="checkbox"/>										
Opposition to the application shown at Part 1	<input type="checkbox"/>										
Application for rectification of the register in respect of the mark shown at Part 1 by a person who is not the registered proprietor of the mark	<input type="checkbox"/>										
<p>I/We request that all notices and communications be sent to my/our authorized agent given in Part 3</p> <p>Signature</p>											
<p style="text-align: right;">_____</p> <p style="text-align: right;">Day Month Year</p> <p>Name(BLOCK LETTERS) _____</p> <p>Official capacity of signatory _____</p>											

Attention is drawn to rule 102(4) of the Trade Marks Rules

Enter the name of each applicant or proprietor. Names of individuals should be given in full. The names of partners in a firm should be given in full. Bodies corporate should be designated by their corporate name

This must be an address in Hong Kong

Mark the appropriate box with an X

HONG KONG TRADE MARK SEARCH REQUEST FORM

Date of Request: _____

Results Needed: Same Day Next Day

NB: Photos will be returned in same day searches. Print-outs can be obtained only in next day searches.

File Details:

Date of Search: _____

IRN: _____

Our Client: _____

Operative: _____

FULL SEARCH

ie: a search to determine whether any **identical or confusingly similar** pending or registered marks exist on the Register.
NB: For this type of search, the mark, class(es) and the searching parameters must all be completed.

Trade Mark: _____ Class(es): _____

Search Parameters:

Type	Criteria	Type	Criteria
Exact Match	_____	Roman Letter	_____
Prefix Match	_____	translation for Chinese character mark	
Suffix Match	_____	Chinese Character	_____
Single letter(s)	_____	translation of Roman letter mark	
Single character(s)	_____	Device categories	_____
Other	_____		
Wildcard	_____		

Internet Search: Yes No

IDENTICAL MARK SEARCH

ie: a search for **identical** pending or registered marks:
NB: For this type of search, you must complete at least the trade mark and class(es).

Trade Mark: _____ Class(es): _____

Appl. No.: _____ Regn. No.: _____

Trade Mark Owner: _____
 (of mark to be searched)

Note: If you have details of the application or registration you want searched, eg. the application or registration number and/or the name of the trade mark owner, please note these details below, and the search will be limited according to these parameters. If details other than the mark and class(es) are not known, the search will disclose all identical pending or registered marks on the Register.



香港特別行政區政府
 知識產權署
 Intellectual Property Department
 The Government of the Hong Kong
 Special Administrative Region

Trade Mark Form T2

Trade Marks Ordinance (Cap. 559)
 Trade Marks Rules (Cap. 559 sub. leg.)

Application for registration of a trade mark
 (including certification mark, collective mark or defensive mark)

Important note :

Please read the Notes and fill in the application form carefully. Please note that only minimal changes to the application are allowed after you have filed the application. Your attention is drawn to section 46 of the Trade Marks Ordinance and rule 24 of the Trade Marks Rules.

1. Details of applicant making request under section 35(2)(a) of the Ordinance for registration of a trade mark

Name (If the name of the applicant is not in Roman letters, please include a transliteration in Roman letters)

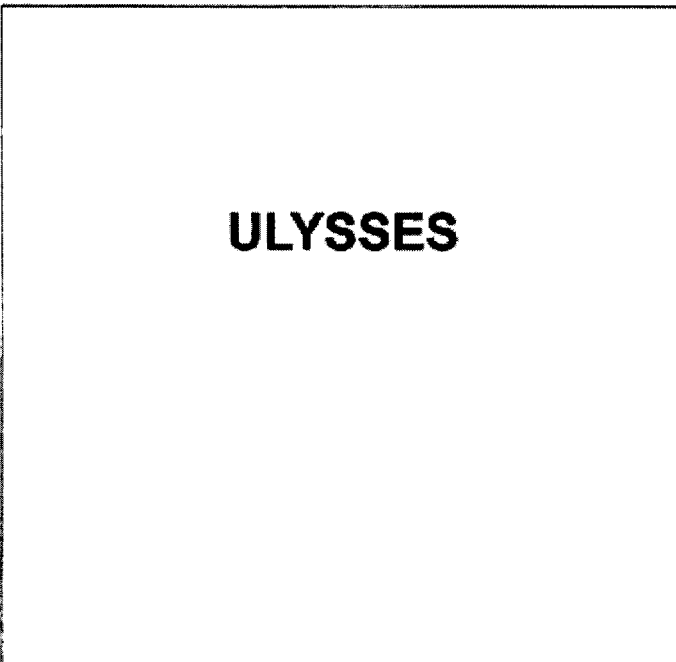
Owner Code
 (if you know it)

Ulysses Chemical Company

Address

10 Liberty Boulevard, Cincinnati, OH 45276, U.S.A.

2. Trade Mark ^{Note 1}



Place a representation of your trade mark in the box. Another representation of the trade mark should be included in Form T2S for scanning.

If you claim colour(s) as a trade mark or as element(s) of a trade mark, the representation of your trade mark must be in the colour(s) for which the claim is made. Complete also Box 7 and attach Form T2A.

If the application is for a series of marks, indicate in the following box the number of marks (not more than 4) in the series.

For Official Use Only		
Device mark classification		
Major	Heading	Sub-heading

3. Non-Roman letters and non-Chinese characters

If the trade mark consists of or contains a word, letter or character that is neither in Roman letters nor in Chinese characters, provide the transliteration and/or translation of the word, letter or character in the space below.

Non-Roman letters or non-Chinese characters

Language

Transliteration

Translation

4. Convention priority details Note 2

If you claim priority, provide particulars of the claim:

Priority date(s) claimed
(DD/MM/YYYY)

Country

Application Number(s)
(if known)

5. Goods and/or services covered by this application Note 3

List the classes in consecutive numerical order and list alongside each class the goods or services appropriate to that class.

Total number of class(es)

Class No(s):	Specification of goods and/or services:

6. Use of trade mark

Please confirm by ticking the box below:

The trade mark is being used by the applicant or with his consent in relation to the goods or services indicated in Box 5, or the applicant honestly intends to use the trade mark, or allows it to be used, in relation to those goods or services.

7. Note : If you are applying for a certification, collective or defensive mark, or a sound or smell mark, or if you claim a 3-dimensional shape or colour(s) as a trade mark/element(s) of a trade mark, or if you wish to include a disclaimer, limitation or condition, please also complete Form T2A.

Is Form T2A attached?

Yes

8. Payment of application fee ^{Note 4}

Application fee (including certification and collective marks):

Amount of application fee HK\$ 1,300 + HK\$ (650 x) (Number of additional class(es), i.e. total number of class(es) in Box 5 minus 1)

Total amount of fee payable HK\$

Application fee for defensive mark only:

Amount of application fee HK\$ 1,500 + HK\$ (750 x) (Number of additional class(es), i.e. total number of class(es) in Box 5 minus 1)

Total amount of fee payable HK\$

9. Signature:

Signature

Deacons
Agents for Applicant

Name and Official
Capacity of Signatory

Date
(DD/MM/YYYY)

If this form is filed by an agent, please provide the Agent Code if you know it

10. Address for service in Hong Kong

Deacons, Solicitors & Notaries, Agents for Trade Marks & Patents
Alexandra House,
3rd - 7th, 18th and 29th Floors,
Central, Hong Kong

Your Reference

Telephone No.

Facsimile No.

E-mail Address

11. State the number of sheets attached to this form

Trade Mark Form T2S

Trade mark image scanning sheet *Note 1*

Please check that you have also included an **IDENTICAL** representation of your trade mark in Box 2 of your application Form T2.

Trade Mark:

ULYSSES

See Schedule 1 to the Trade Marks Rules for details of fees

This form must be filed in duplicate

Insert written particulars of the trade mark. If the trade mark includes a device refer only to "a device"

TRADE MARKS ORDINANCE (CHAPTER 43)		Form TM-No.6 Fee No. 5
Notice of Opposition to Application for Registration of a Trade Mark		FOR OFFICIAL USE
1. Number of the application which opposition is lodged	Trade Mark	Class No.
2. Details of the Gazette in which the above application was advertised Date _____ <div style="display: flex; justify-content: space-between;"> _____ Gazette No. _____ Page _____ </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> Day Month Year </div>		
3. Full name of applicant		
4. Opponent's details Name _____ Address _____		

Set out in full the grounds for opposition. If registration is opposed on the ground that the mark resembles any mark already on the register or the subject of a current application, the number of that mark or for a current application which has been advertised, the date, number and page of the Gazette in which it has been advertised should also be given.

An opponent who is resident abroad must give a Hong Kong address for service to which all correspondence from the Trade Mark Registry will be sent

See rules 96 and 102

	5. Grounds of opposition to registration	
	Please see the attached.	
	6. Agent's details	
	Name	
	Address	
	Agent's Own reference	
	7. Address for service	
	8. Signature	Date
	_____	_____
		Day Month Year
	Name (BLOCK LETTERS) _____	
	Official capacity of signatory _____	

(9)

For Chinese
Patent Application

委 托 书

POWER OF ATTORNEY

No legalization

我/我们,是 _____
的公民/法人,兹根据<<中华人民共和国>>第十九条第一款规定,委托 _____
_____ (地址: 中国 _____)

的专利代理人 _____, _____ 代为办理名称为
_____ EPOXY Technology _____

的发明创造在中华人民共和国申请.

- 发明专利 实用新型专利 外观设计专利

授权上述代理人办理(1)有关申请审查,批准过程中的各项事宜;

(2)有关专利权的各项事宜.

委 托 人 _____ Ulysses Chemical Company _____

委托单位代表人 _____ Bill Calore _____

日 期 _____

* The above lines are all filled out by the Agency.

Pursuant to the provisions of Paragraph 1 of Article 19 of the Chinese Patent law ,
I/we, citizen/legal entity of _____ hereby entrust patent agents _____
_____ of _____

(address: _____ P.R. China) with application in the
People's Republic of China for

patent for invention patent for utility model patent for design
entitled _____ EXPOXY Technology _____

The above-mentioned agents have been entrusted

- (1) to handle all related matters in filing and prosecuting the application;
- (2) to handle all related matters concerning the patent right.

Applicant _____ **Ulysses Chemical Company** _____
(signature and typewriting)

Authorized on _____

(10)

For PCT Applications
Enter into China

No Legalization

委 托 书

POWER OF ATTORNEY

我/我们,是 _____

的公民/法人,兹根据<<中华人民共和国>>第十九条第一款规定,委托 _____

_____ (地址: 中国 _____)

向中国专利局办理国际申请号为 _____

的国际申请在指定局或选定局程序中的全部事宜.

Pursuant to the relevant provisions of the patent Law of the People's Republic of China, I/we, citizen/legal entity of _____, hereby entrust _____ (address: _____ P.R. China) to act on my/our behalf with an application based on PCT application No. _____ in the People's Republic of China, and to handle all matters in the procedure before the designated or elected Chinese Patent Office.

委托人

Applicant _____ Ulysses Chemical Company
(signature and typewriting)

委托单位代表人

Representative of legal entity _____
(signature and typewriting)

委托日期

Authorized on _____

以下由专利代理机构填写 (To be filled out by the Agent)

专利代表机构 _____, _____ 为该申请的代表人.

被委托专利代表机构印章 _____

(11)-1

中华人民共和国国家知识产权局

PCT 申请进入作为指定局/选定局的 中华人民共和国国家知识产权局的国家阶段		本栏由国家知识产权局专利局填写 (国家申请号)	
		申请日	
		进入国家阶段日期	
国际申请号		国际申请日	
		优先权日 (最早的)	
国际公布号	国际公布日	国际公布语言	英文
发明名称			
1. 请求中国国家知识产权局授予的保护类型 (国际申请请求书中注明的) <input checked="" type="checkbox"/> 发明专利 <input type="checkbox"/> 实用新型			
2. 对中国的申请人 (1) 姓名或名称: 地 址: (2) 姓名或名称: 地 址: (3) 姓名或名称: 地 址:			
3. 对中国的发明人 (姓名) (1) (2) (3) (4) (5) (6) (7) (8)			
4. 代理人 代理机构名称: 中原信达知识产权代理有限责任公司 代理人姓名: 朱登河 顾红霞 代理机构地址: 北京市朝阳区建国路 99 号中康大厦 1300 室 电 话: (8610) 65813866			
5. 优先权项		数据采集栏 (由专利局填写)	
优先权日	在先申请国	在先申请号	
1)			说明书页数:
2)			附图页数:
3)			权项数:
4)			实审请求标记:
5)			涉及微生物申请:

PCT/CN 501 表 (首页) (1999 年 1 月)

(11)-2

6. 申请人希望国家知识产权局专利局在,

原始提交的国际申请中文译本的基础上开始审查

在下列文件基础上开始审查:

说明书, 第 1-13 页, 按原始提出的国际申请文件的译文
第 _____ 页, 按国际初步审查报告附件的译文
第 _____ 页, 按条约第 28 条或 41 条的修改

权利要求, 第 1-21 项, 按原始提出的国际申请文件的译文
第 _____ 项, 按条约第 19 条的修改的译文
第 _____ 项, 按国际初步审查报告附件的译文
第 22-34 项, 按条约第 28 条或 41 条的修改

附图, 第 1-10 页, 按原始提出的国际申请文件的译文
第 _____ 页, 按国际初步审查报告附件的译文
第 _____ 页, 按条约第 28 条或 41 条的修改

7. 费用

已缴申请费 (包括印刷费、说明书及权利要求附加费)

已缴优先权要求费 ()

自国际申请日起算 25 个月期限已满, 补缴维持费

已缴审查费

已缴单一性恢复费

已缴恢复费

费用的减免

本国际申请是向作为受理局的中国国家知识产权局专利局提出的

本国际申请是在作为国际检索单位的中国国家知识产权局专利局检索的

本国际申请是在作为国际检索单位的欧洲、日本、瑞典专利局检索的

本国际申请是在作为国际初步审查单位的中国国家知识产权局专利局审查的

8. 请求恢复

由于提交国际申请的中文译文和/或缴纳申请费是在

自优先权日起 20 个月之后,但在 22 个月之前,

自优先权日起 30 个月之后,但在 32 个月之前,并且正确的国际初步审查要求书是在自优先权日起 19 个月之前提出的,

按照“关于中国实施《专利合作条约》的规定”第 35 条请求恢复权利,并同时缴纳恢复费

9. 发明单一性

本国际申请不符合发明单一性的规定,按照“关于中国实施《专利合作条约》的规定”第 24 条,

为未经国际检索和国际初步审查的部分缴纳单一性恢复费

为未经国际初步审查的部分缴纳单一性恢复费

10. 微生物

本国际申请中的发明涉及的微生物菌种已经在国际申请日 (或优先权日) 之前向《布达佩斯条约》规定的国际保藏单位保藏

保藏证明已附送 保藏证明随后提交

存活证明已附送 存活证明随后提交

11. 复查请求

申请人于 _____ 收到下列通知:

受理局拒绝给予国际申请日, 国际局按 PCT 条约第 12 条 (3) 作出认定,

受理局宣布申请被认为撤回, 受理局宣布对中国的指定被认为撤回;

根据 PCT 条约第 25 条特此向你局提出复查请求, 并且

已请求国际局将档案中有关文件送交你局,

已经提供中文译本并缴纳国家费用。

PCT/CN 501 表 (第二页) (1999 年 1 月)

(11)-4

PCT APPLICATION ENTERING THE NATIONAL PHASE OF THE CPO AS DESIGNATED/ELECTED OFFICE			For Official Use Only	
			(National Application Number)	
			Filing Date	
International Application Number			Date of Entry	
International Filing Date			Priority Date (earliest)	
International Publication Number	International Publication Date	International Publication Language English		
Invention Title				
1. Protection Category requested to the CPO (as indicated in the PCT Request)				
<input checked="" type="checkbox"/> Patent for Invention <input type="checkbox"/> Patent for Utility Model				
2. Applicant(s) in Chinese National Phase				
(1) Name				
Address :				
(2) Name :				
Address :				
(3) Name :				
Address :				
3. Inventor(s) in Chinese National Phase				
4. Agent(s)				
Name : CHINA SINDA INTELLECTUAL PROPERTY LTD. Attorney: Denghe Zhu				
Address : Suite 1300, China Garment Mansion, NO.99 Jianguo Road, Telephone: (8510) 65813856				
Chaoyang District, Beijing 100020, P. R. China				
5. Priority Item(s):			Datum Collections (For Official Use Only) <ul style="list-style-type: none"> • Description • Drawings for Description • Claims • Indication for Request for Examination as to Substance • Application Concerning Micro-Organism 	
Priority Date	Nation	Application No.		
1)				
2)				
3)				
4)				
5)				
6)				
7)				
8)				
9)				
10)				

Form PCT/CN 501 (first sheet)

6. The applicant requests the Chinese Patent Office

To proceed with the examination on the basis of the Chinese translation of the originally filed international application

To proceed with the examination on the basis of the following documents:

Specification, Pages 1-13, as in the Chinese translation of originally filed International Application
 Pages _____, as in the Chinese translation of Annex to the IPER
 Pages _____, as amended under Article 28 or Article 41 of PCT

Claims, Nos. 1-21, as in the Chinese translation of originally filed International Application
 Nos. _____, as in the Chinese translation of the amended under Article 19 of PCT
 Nos. _____, as in the Chinese translation of Annex to the IPER
 Nos. 22-34, as amended under Article 28 or Article 41 of PCT

Drawings, Sheets 1-10, as in the Chinese translation of originally filed International Application
 Sheets _____, as in the Chinese translation of Annex to the IPER
 Sheets _____, as amended under Article 28 or Article 41 of PCT

7. The Following Fees have been paid :

Filing fee (including printing fee and additional fee for Specification and Claims)

Fee for claiming priority ()

Examination fee

Restoration fee

Remission of fees :

The International Application was filed with CPO as RO

The International Application was searched by CPO as ISA

The International Application was searched by EPO, JPO, SPO as ISAs

The International Application was examined by CPO as IPEA

Maintenance fee after the 25-month time limit

Unity restoration fee

8. Request for Restoration

Since the Chinese translation of the International Application was submitted or the application fee was paid

After 20 months but before 22 months from the priority date,

After 30 months but before 32 months from the priority date and an acceptable request for international preliminary examination was filed before 19 months from the priority date,

the request for restoration of the right is made hereby under Article 35 of "Provisions for the Implementation of PCT in China", and the restoration fee is paid with the said request.

9. Unity of Invention

This international application is not in conformity with the relevant provisions on the unity of inventions under Article 24 of "Provisions on the Implementation of PCT in China".

Unity restoration fee has been paid for those inventions without being searched by ISA and without being examination by IPEA

Unity restoration fee has been paid for those inventions without being examination by IPEA

10. Micro-Organism

A sample of the micro-organism concerning the invention for the international application was deposited in a depository institution authorized under the Budapest Treaty before the international filing date (priority date)

The receipt of deposit has been furnished

Certificate of Survival has been furnished

The receipt of deposit will be furnished afterwards

Certificate of Survival will be furnished afterwards

11. Request for Review

The applicant received the following notification on _____ :

The Receiving Office refused to issue an international filing date

The International Bureau has identified that the international application to have been withdrawn according to Article 12 (3) of PCT

The Receiving Office has announced that the application is deemed to have been withdrawn

The Receiving Office has announced that the designation of China is deemed to have been withdrawn in accordance with Article 25 of PCT, a request for review is hereby made to you office , and

The International Bureau has been requested to transfer the related documents to your office

Chinese translation has been submitted and national fees have been paid

Form PCT/CH 501 (Page 2)

(11)-6

12. CHECK LIST	Check Copy(ies) (for CPO only)
(1) Chinese Translation	
<input checked="" type="checkbox"/> Abstract 2 Copies, each 1 sheet
<input checked="" type="checkbox"/> Drawing for abstract 2 Copies, each 1 sheet
<input checked="" type="checkbox"/> Claims 2 Copies, each 5 sheet
<input checked="" type="checkbox"/> Description 2 Copies, each 13 sheets
<input checked="" type="checkbox"/> Drawings for description 2 Copies, each 10 sheets
<input type="checkbox"/> Claims amended under the PCT Article 19. Copies, each sheets
<input type="checkbox"/> Statement on the amendment under the PCT Article 19. Copies, each sheets
<input type="checkbox"/> Annexes to the international preliminary examination report Copies, each sheets
(2) Amendments	
<input checked="" type="checkbox"/> Amended documents (only applicable to the amendment by the applicant under the PCT Article 28 or 41) 2 Copies, each 3 sheets
(3) Power of Attorney	
<input type="checkbox"/> Power of Attorney
<input type="checkbox"/> General Power of Attorney (Reg. No. _____)
(4) Request for Substantive Examination	
<input type="checkbox"/> Request for substantive examination
<input type="checkbox"/> References
(5) Attached other Documents	
<input type="checkbox"/> Assignment for a pending patent application
<input type="checkbox"/> Assignment for priority
<input type="checkbox"/> A Receipt of deposit from the depository institution designated by the CPO
<input type="checkbox"/> Proof for the publication without losing novelty and without damaging novelty
<input type="checkbox"/> Copy of the original international application documents certified by IB (used for requesting for earlier processing under Article 23 (2) of the PCT only)
<input type="checkbox"/>
<input type="checkbox"/>
13. Signature by Agency	
Date: _____	
<input type="checkbox"/> Annex (for those which can not be filled out in the boxes) _____ page(s)	

Form PCT/CN 501 (last sheet)

(12)-2

submitted on _____;
 Page 1, 5, 6 of the amendment(s) under Article 51 of the Rules for Implementing the Chinese Patent Law, submitted on September 23, 2002;
 Page ___ of the amendment(s) submitted on _____;

Drawings:

Page 1-4, 6-10 of the submitted PCT application for entering into the Chinese national phase;
 Page 5 of the Annex to the International Preliminary Examination Report, submitted on _____;
 Page ___ of the amendment(s) under Article 28 or Article 41 of the PCT, submitted on _____;
 Page ___ of the amendment(s) under Article 51 of the Rules for Implementing the Chinese Patent Law, submitted on _____;
 Page ___ of the amendment(s) submitted on _____;

Abstract: The copy submitted on entering into the Chinese national phase.

3. The title of the above-identified patent application for invention which is granted the patent right has:
 - NOT been changed.
 - Been changed from the original _____ into the above-identified one.

4. The applicant's voluntary amendment(s) received by the CPO after the issuance of this Notification shall be placed on file but shall not be examined.

Examination Dept. _____ Examiner: Fan Ye

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[Translation]

**THE STATE INTELLECTUAL PROPERTY OFFICE
OF THE PEOPLE'S REPUBLIC OF CHINA**

Add: Xitucheng Road 6, Jimen Qiao, Haidian District, Beijing 100088, China P.O. Box Beijing 8020

SCT001205-10

Dispatching Date:

December 27, 2002

Application No.:
Applicant:
Title of Invention:

NOTIFICATION FOR PATENT REGISTRATION FORMALITIES

In accordance with the provisions of Rule 54 of the Implementing Regulations under the Chinese Patent Law and of the 75th Announcement of the State Intellectual Property Office, the applicant is required to pay the following fees before _____

Maintenance fee: RMB 300.00 yuan

Registration Fee: RMB 250.00 yuan

(Including printing of the announcement)

The 6th annuity: RMB 1200.00 yuan

Stamp tax for patent certificate: RMB 5.00 yuan

Total Sum: RMB 1755.00 yuan

Amount of paid fees: RMB 0.00 yuan

Amount of outstanding fees: RMB 1755.00 yuan

If all the above fees are paid by the applicant before the time limit, the State Intellectual Property Office will register the grant of the patent right on the Patent Register and issue the patent certificate. The patent right shall become effective as of the date of CPO announcement.

If the applicant fails to make the above-listed fees in full within the time limit, the applicant shall be deemed to have abandoned the right to obtain the patent right.

**The State Intellectual Property Office of
the People's Republic of China**


(12)-4

中华人民共和国国家知识产权局

地址：北京市海淀区蓟门桥西土城路6号


邮政编码：100088

邮政信箱：北京8020信箱

2P	发文日期 2002. 12. 27																															
申请号：	申请人：																															
发明创造名称：																																
<h3 style="margin: 0;">办 理 登 记 手 续 通 知 书</h3> <p style="margin: 5px 0;">依照专利法实施细则第54条及专利局第75号公告的规定，申请人应当于</p> <p style="margin: 5px 0;">： 年 月 日 之前缴纳下列费用：</p> <table style="margin: 10px auto; border: none;"> <tr> <td style="padding-right: 10px;">专利维持费</td> <td style="padding-right: 10px;">300.00 元</td> <td style="padding-right: 10px;">0</td> <td style="padding-right: 10px;">(减缓标记)</td> <td></td> </tr> <tr> <td>专利登记费</td> <td>200 元</td> <td></td> <td></td> <td></td> </tr> <tr> <td>公告印刷费</td> <td>50 元</td> <td></td> <td></td> <td></td> </tr> <tr> <td>第06年度年费</td> <td>1200.0 元</td> <td>已缴费用</td> <td>0.00 元</td> <td></td> </tr> <tr> <td>专利证书印花税</td> <td>5 元</td> <td></td> <td></td> <td></td> </tr> <tr> <td colspan="5" style="padding-top: 10px;">应缴费用 1755 元</td> </tr> </table> <p style="margin: 10px 0;">申请人按时缴纳上述费用的，专利局将在专利登记簿上登记专利权的授予，并将颁发专利证书，专利权自公告之日起生效。</p> <p style="margin: 10px 0;">申请人期满未缴纳或未缴足上述费用的，视为放弃取得专利权的权利。</p> <p style="margin: 10px 0;">特此通知</p> <p style="text-align: center; margin: 10px 0;">中华人民共和国国家知识产权局</p> <p style="font-size: small; margin: 10px 0;">注：回函请寄国家知识产权局专利局受理处，缴费请寄国家知识产权局专利局费用管理处。凡寄给审查员个人的信函或费用均不具有法律效力。</p>			专利维持费	300.00 元	0	(减缓标记)		专利登记费	200 元				公告印刷费	50 元				第06年度年费	1200.0 元	已缴费用	0.00 元		专利证书印花税	5 元				应缴费用 1755 元				
专利维持费	300.00 元	0	(减缓标记)																													
专利登记费	200 元																															
公告印刷费	50 元																															
第06年度年费	1200.0 元	已缴费用	0.00 元																													
专利证书印花税	5 元																															
应缴费用 1755 元																																
审查员	审查部门： 初审及复审处																															
年 月 日																																

(12)-5

中华人民共和国国家知识产权局

邮政编码:		(无审查业务专用章 不具备法律效力)
中 请 号:	部门及通知书类型: -2D	发文日期:
申 请 人:		
发 明 名 称:		

授予发明专利权通知书

(进入国家阶段的 PCT 申请)

根据专利法第三十九条及其实施细则第五十四条的规定,上述发明专利申请经实质审查,没有发现驳回理由,现作出授予发明专利权的决定。

申请人收到本通知后,还应当依照办理登记手续通知书的内容办理登记手续。

申请人按期办理登记手续,国家知识产权局将作出授予发明专利权的决定,颁发发明专利证书,并予以登记和公告。期满未办理登记手续的,视为放弃取得专利权的权利。

2. 授予专利权的上述发明专利申请是以进入中国国家阶段时提交的国际申请文件为基础的;

授予专利权的上述发明专利申请是以以下述文件为基础的:

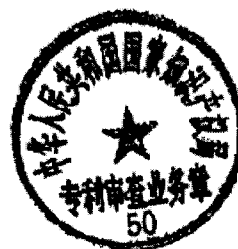
- 说明书:** 第 1-13 页,按进入中国国家阶段时提交的国际申请文件的文本;
 第 _____ 页,按国际初步审查报告的附件;
 第 _____ 页,按 _____ 年 _____ 月 _____ 日提交的依据专利合作条约第 28 条或 41 条修改;
 第 _____ 页,按 _____ 年 _____ 月 _____ 日提交的依据专利法实施细则第 51 条规定进行的修改;
 第 _____ 页,按 _____ 年 _____ 月 _____ 日提交的修改文本;
- 权利要求书:** 第 2-4 页,按进入中国国家阶段时提交的国际申请文件的文本;
 第 _____ 页,按国际初步审查报告的附件;
 第 _____ 页,按依据专利合作条约第 19 条的修改;
 第 _____ 页,按 _____ 年 _____ 月 _____ 日提交的依据专利合作条约第 28 条或 41 条修改;
 第 1, 5, 6 页,按 2002 年 9 月 23 日提交的依据专利法实施细则第 51 条规定进行的修改;
 第 _____ 页,按 _____ 年 _____ 月 _____ 日提交的修改文本;
- 附图:** 第 1-4, 6-10 页,按进入中国国家阶段时提交的国际申请文件的文本;
 第 5 页,按国际初步审查报告的附件;
 第 _____ 页,按 _____ 年 _____ 月 _____ 日提交的依据专利合作条约第 28 条或 41 条修改;
 第 _____ 页,按 _____ 年 _____ 月 _____ 日提交的依据专利法实施细则第 51 条规定进行的修改;
 第 _____ 页,按 _____ 年 _____ 月 _____ 日提交的修改文本。
- 摘要:** 按进入中国国家阶段时提交的;

3. 授予专利权的上述发明专利申请的名称:

- 未变更。
 由 _____ 变更为上述名称。

4. 在本通知发出后收到申请人主动修改的申请文件,存入档案,不予审查。

5. 审查员依职权对申请文件修改如下:

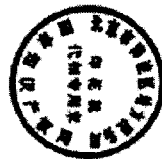


网 络 请 寄: 100088 北京市海淀区蓟门桥西土城路 6 号 国家知识产权局专利局受理处收
 2212 1 2001.7 (注:凡寄给审查员个人的信函不具有法律效力)

(13)

发明专利证书

证书号 第 号



发明名称:
发明人:

本发明经过本局依照中华人民共和国专利法进行审查，决定授予专利权，颁发本证书并在专利登记簿上予以登记。专利权自授权公告之日起生效。

专利号: 国际专利分类号:

本专利的专利权期限为二十年，自申请日起算。专利权人应当依照专利法及其实施细则规定缴纳年费。缴纳本专利年费的期限是每年 月 日前一个月内。未按规定缴纳年费的，专利权自应当缴纳年费期满之日起终止。

专利申请日: 年 月 日

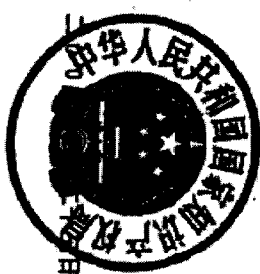
专利权人:

专利证书记载专利登记时的法律状况。专利权的转移、质押、无效、终止、恢复和专利权人的姓名或名称、国籍、地址变更等事项记载在专利登记簿上。

授权公告日: 年 月 日

专利号

局长 王景川



第 1 页 (共 1 页)

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质量技术监督 登记保存(封存)(扣押)决定书

质技监 招 字(2003)第 号

你(单位) 有限公司 等, 涉嫌存在 假冒 问题。

根据《中华人民共和国行政处罚法》的规定, 现决定予以登记保存(封存)(扣押)。

1. 登记保存(封存)(扣押)期限: 2003. 月. 日 ~ 2003. 月. 日
2. 登记保存(封存)(扣押)地点: 有限公司
3. 被登记保存(封存)(扣押)物品清单附后。

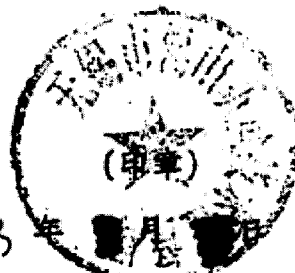
在登记保存(封存)(扣押)期间, 未经本局同意, 任何人不得隐匿、转移、变卖、损毁本决定所列物品。违反规定者, 将依法追究有关责任人的法律责任。

如对本决定不服, 可以于收到本决定书之日起六十日内向 质量技术监督局 申请复议, 也可以于 2个月 内依法向 区人民法院 提起行政诉讼。

被登记保存(封存)(扣押)物品持有人: 有限公司

执法人员:

见证人:



本文书一式三份。正本送达被登记保存(封存)(扣押)物品持有人, 副本交物品保管人, 副本行政部门存档。

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质量技术监督 涉案物品清单

编 号	名 称	规格型号	数量(单位)	备 注
1	[REDACTED]	[REDACTED]	[REDACTED] 箱 (金/箱)	
2	小包装盒	楸 [REDACTED] 字样	[REDACTED] 只	
3	[REDACTED]	[REDACTED]	[REDACTED] 盒	
4	[REDACTED]	[REDACTED]	[REDACTED] 只	

第三联 行政部门存档

当事人: [REDACTED]

执法人员: [REDACTED]



本文书一式三联。一联由当事人存,二联由物品保管人存档,三联由行政部门存档。

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执法机关代码: [REDACTED]

质量技术监督 行政处罚决定书 (副本三)

[REDACTED] 质技监罚字[2003]第[REDACTED]号

[REDACTED]市[REDACTED]有限公司:

营业执照号: [REDACTED] 地址: [REDACTED]市[REDACTED]
邮编: [REDACTED] 电话: [REDACTED]
法定代表人: [REDACTED] 职务: 总经理 电话: [REDACTED]

处罚事由: 你(单位)于2003年[REDACTED]月[REDACTED]日至[REDACTED]日生产的[REDACTED]箱(每箱[REDACTED]把、[REDACTED]把),每箱[REDACTED]把:小包装盒[REDACTED]只(标识“[REDACTED]”);[REDACTED]把(标识“[REDACTED]”);[REDACTED]只(标识“[REDACTED]”)。以上事实已违反《中华人民共和国产品质量法》第三十条的规定。根据《中华人民共和国产品质量法》第五十三条的规定,本局决定给予以下行政处罚:

1. 责令改正;

2. 没收伪造产地“[REDACTED]”的[REDACTED]产品:[REDACTED]箱;小包装盒(标识“[REDACTED]”)[REDACTED]只;[REDACTED]把;[REDACTED]只;“[REDACTED]”[REDACTED]个,“[REDACTED]”[REDACTED]个。

3. 处违法生产产品货值金额[REDACTED]元[REDACTED]%的罚款[REDACTED]元。

依据《中华人民共和国行政处罚法》的规定,决定将罚没款合[REDACTED]元上缴国库。

请于收到本决定书之日起15日内(末日为节假日顺延)到中国[REDACTED]银行[REDACTED]市任一办事处、分理处、营业部网点缴纳上述款项。若使用本票和汇票缴纳罚没款时,请到中国[REDACTED]银行[REDACTED]分行营业部本部地址[REDACTED]办理缴纳手续。逾期不缴纳的,每日按罚没款的百分之三加处罚款。

如对本决定不服,可在接到本决定书之日起六十日内向[REDACTED]质量技术监督局或[REDACTED]市[REDACTED]区人民政府申请行政复议,也可以于接到本决定书之日起三个月内向[REDACTED]市[REDACTED]区人民法院提起行政诉讼。



送达日期: (大写) 贰零零叁年[REDACTED]月[REDACTED]日 送达方式: (直接送达)
本文书一式四份,一份送达当事人,一份交指定银行,一份交财务部门,一份随案归档。

副本三 (随案归档)

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市工商行政管理局分局

扣留(封存)财物通知书

工商分局扣(封)存()第 号

[Redacted]

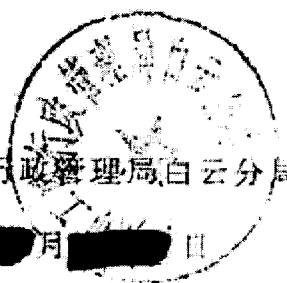
经查,你(单位)涉嫌 [Redacted] 为,本局根据 [Redacted] 的规定,决定对有财物予以扣留(封存)(详见《财物清单》第 [Redacted] 号)

第二联送达

如对扣留(封存)措施不服,可在收到本通知之日起十五日内向 [Redacted] 申请复议;也可以向人民法院起诉。

上述财物,未经本局同意,不得隐匿,销毁或转移。

附:《财物清单》第 [Redacted] 号



广州市工商行政管理局白云分局

2002年 月 日

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市工商行政管理局 行政处罚决定书

工商检[2003]第 号

当事人：，女，岁，汉族，文盲，个体工商户，经营场所：中国 市场 号店，经营范围及方式：批发零售箱包（凡涉及许可证或专项审批的凭有效证件经营）。

当事人于2002年 月 日，从深圳一地摊上购进侵犯第 号、第 号商标专用权（相近似）的皮包 只（各 只），其中标有与第 号商标注册证图案相似图案的皮包大 只，中 只，小 只，标有与第 号商标注册证图案相似字号的皮包大 只，中 只，小 只，大号皮包进价每只 元，中、小号皮包每只 元，已通过 号店售出上述两种包大号的 只，中号 只，小号 只，售价分别是大号每只 元、中、小号每只 元，计非法经营额 元，违法所得 元。案发后，被我局经检大队查获。

上述事实有现场检查笔录、询问笔录、抽样取证记录单等证据证明。

当事人经销商标侵权皮包，已违反了《中华人民共和国商标法》第五十二条第（二）项规定，根据《中华人民共和国商标法》第五十三条及《中华人民共和国商标法实施条例》第五十二条的规定，本局决定：

- 一、 责令立即停止侵权行为；
- 二、 没收在案侵权物品；
- 三、 处以罚款 元。

当事人应在收到本处罚决定书之日起十五日内将罚款交到 市工商银行，逾期不缴纳罚款，每日按罚款数额的3%加处罚款。

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如不服本处罚决定，可在收到本处罚决定书之日起六十日内，向[]市工商行政管理局申请复议，或在十五日内向[]市人民法院起诉，并将副本抄送本局。



主送：[]

抄送：[]市工商行政管理局、[]市人民政府、局办公室、
财务科、相关科室、属地工商所（分局）

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广东省广州市中级人民法院 民事判决书

(2002)穗中法知产初字第 号

原告：美国 公司 (The Company)。地址：
美国 州 镇 街 号。

法定代表人：。

委托代理人：、， 市 律师事务所律师。

被告： () 有限公司。地址： 区 镇第
工业区。

法定代表人：。

委托代理人：， 广东 律师事务所律师。

委托代理人：， 公民代理，住 县
街 号，身份证号码 。

原告美国 公司诉被告 () 有限公司侵犯 专利权纠纷一案，本院受理后，依法组成合议庭，公开开庭进行了审理。上列原、被告委托代理人到庭参加诉讼。本案现已审理终结。

原告美国 公司诉称，原告主要从事 用品 (包括) 和 品的生产销售，在该行业享有很高的知名度。2001 年 月，原告在中国就其一款 的外观设计向我国国家知识产

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权局申请了专利，同年 月，专利申请获得授权，专利号为 。200 年 月，原告向国家海关总署进行了知识产权海关保护备案。被告未经原告授权，擅自大量生产、销售与原告专利外观设计极为近似的 。200 年 月 日， 海关扣留了被告准备出口的一批价值 美元的涉嫌侵权 。被告的上述行为构成对原告专利的侵权。为此，请求法院判令：1、被告立即停止侵权行为，销毁侵权产品；2、赔偿原告经济损失人民币 万元。由被告承担本案全部诉讼费用。

被告 () 有限公司辩称，原告请求保护的专利，在其申请日之前，该外观设计就已经被公开，公开的文献有美国 号“ 的 ”专利、 “ 的 ” 与 方式和封面”专利、 “ ”专利、美国 19 年-20 年出版的有关 杂志，原告在本案中请求保护的专利丧失新颖性，不应受法律保护。事实上被告早在原告专利申请日之前就已经生产销售涉案 ，被告 的外观与已经公开 的外观更为接近，与原告专利不相同，被告使用的是自由公知技术，不侵犯原告的专利权。另外，原告要求赔偿 元，缺乏事实和法律依据。因此，请求法院依法驳回原告对被告的诉讼请求。

经审理查明，20 年 月 日，原告就其设计的一款 外观向我国国家知识产权局申请了外观设计专利，同年 月

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日，专利申请获得授权并予以公告，专利号为 [REDACTED]（本案专利的外观设计专利权），专利权人为原告。200[REDACTED]年[REDACTED]月，原告就本案请求保护的专利向国家海关总署进行了知识产权海关保护备案。200[REDACTED]年[REDACTED]月[REDACTED]日，[REDACTED]海关根据原告请求，基于原告的上述备案，扣留了被告准备出口的 [REDACTED]箱，价值 [REDACTED]美元的涉嫌侵权 [REDACTED]。原告已经在法定的期限内向海关提供了担保，并在法定的期限内提起了本案诉讼。

原告指控被告生产、销售侵权的证据为海关查扣被告准备出口的 [REDACTED]箱涉嫌侵权 [REDACTED]。被告对海关查扣的 [REDACTED]为被告生产销售没有异议，但认为原告请求保护的外观设计在原告专利申请日之前已经被公开，被告使用的是公知技术，不构成对原告专利的侵权。被告主张的证据有：1、19[REDACTED]年 [REDACTED]月 [REDACTED]日公开的美国 [REDACTED]号“[REDACTED]的 [REDACTED]”专利、19[REDACTED]年 [REDACTED]月 [REDACTED]日公开的 [REDACTED]“[REDACTED]的 [REDACTED]与 [REDACTED]方式和封面”专利、19[REDACTED]年 [REDACTED]月 [REDACTED]日公开的 [REDACTED]“[REDACTED]”专利，上述专利文献反映了与原告请求保护专利的 [REDACTED]形状、插件与 [REDACTED]的分解状态、[REDACTED]串起形成一叠 [REDACTED]等相一致。2、美国 19[REDACTED]年至 20[REDACTED]年出版的有关 [REDACTED]杂志，其中“[REDACTED]”杂志第 [REDACTED]页的 [REDACTED]外观，19[REDACTED]年 [REDACTED]月刊的“[REDACTED]”杂志第 [REDACTED]页的 [REDACTED]外观，19[REDACTED]年 [REDACTED]-[REDACTED]月双月刊的“[REDACTED]”杂志第 [REDACTED]页文件车上的两本 [REDACTED]的可见 [REDACTED]形状及封面图案与原告专利外观设计

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计主视图一致。被告认为其享有先用权的证据：1、被告于1998年12月15日对涉案1000型号产品的“出货单”以及海关出口报关单。2、被告公司于1998年至2000年的宣传彩册。原告对被告的主张先用权证据予以否认，被告不能提供销售单据上反映的产品与涉嫌侵权1000外观相一致的证据，应认定被告主张享有先用权证据不充分。

被告生产销售涉嫌侵权1000外观、在原告请求保护专利申请日之前已经公开的专利文献及公开出版物的1000外观与原告1000外观设计对比：原告1000外观设计专利不保护色彩，其形状为1000形的一1000。主视图为1000形，图案为1000边沿直线形成1000形边框，1000形的四个角似1000，分解状态立体图可以看出，1000左边有一可插入件，插入后将1000的1000遮挡，与1000封面形成一整体，起到美观作用，1000打开状态中间为一条直线（看不出空隙），局部放大图1000为1000串起每页1000，形成一叠，局部放大图1000为1000与1000相穿。公开出版物（美国“1000”、“1000”杂志）公开的1000外观是一1000形，正面图案也是以直线条形成1000形边框，四角有1000结与原告1000外观设计主视图相同。被告生产销售涉嫌侵权1000外观，不是直线，而是花边线，且1000形的四个角没有原告相册似1000图案，分解状态，1000左边亦有一可插入件，插入后也将1000的1000遮挡，与1000封面形成一整体，

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但翻册打开状态中间有明显的空隙。美国 [] “ [] 的叠式装订与 [] 方式和封面” 专利的说明图及权利要求书内容反映：该专利的说明图 [] 反映 [] 为 [] 件的 [] 形 [] ，其效果与原告专利保护视图的主视图一致； [] 的封面与每一 [] 用 [] 串联成为一体，其效果与原告专利保护视图的局部放大图 [] 一致；该专利的说明图 [] 是说明插入件如何与 [] 相插过程，所表现的效果与原告专利保护视图的分解状态立体图一致。应当认定本案原告请求保护的专利权是原告将美国专利公开的已有技术（体现在 [] 的形状、插件与 [] 的分解状态、 [] 串起形成一叠 [] 等）与美国公开出版物公开的已有 [] 外观（体现在 [] 主视图图案）简单组合形成，被告生产的涉嫌侵权产品的外观与原告 [] 外观设计近似，被告使用的是可自由利用的已有技术范围。

经法庭审理双方当事人确认的事实有：原告是其请求保护的 [] 外观设计专利权人，被告有生产销售涉嫌侵权 [] 的事实，美国 [] 、 [] 、 [] 号专利。应当认定的事实有：原告请求保护的专利权是原告将美国专利公开的已有技术与美国公开出版物公开的已有 [] 外观简单组合形成，被告生产的涉嫌侵权 [] 的外观与原告 [] 外观设计近似，但被告使用的是可自由利用的已有技术范围。不能认定的事实有：被告具有先用权的事实。

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以上事实有原告的专利证书、被告印制的广告彩页和销售凭证以及海关查扣被告涉嫌侵权[]证明、美国[]、[]、[]号专利、英国“[]”、“[]”杂志、当事人的陈述等证据证实。

本院认为，产品外观设计保护范围是表示在专利上的图片或照片中的该外观设计专利产品的外表形状、图案、色彩或者其结合所作出的富有美感的新设计部分；在专利申请日前该产品已有的外表形状，该产品内部结构形状以及该产品技术功能所决定的外表形状，不属于该外观设计专利所保护的内容。将已有技术的显而易见的简单组合成的技术方案申请为专利保护，不符合专利法立法保护精神。本案原告请求保护的专利权，为原告将美国专利公开的[]形状、插件与[]的分解状态、胶带串起形成一叠[]等已有技术与公开出版物公开的[]图案已有[]外观简单组合形成，属于已有技术的显而易见的简单组合形成的技术方案，即属于在原告专利申请日前该产品已有的外表形状。被告产品的外表形状虽与原告[]号专利外观设计近似，但因原告专利对已有技术的显而易见的简单组合，属于可自由利用的已有技术范围，不属于原告外观设计专利保护的内容，故被告在原告专利申请日前该产品已有的外表形状，被告制造的产品不构成侵犯原告享有的外观设计专利权。为此，被告的抗辩理由成立，本院予以采纳。被告认为其享有先用权的抗辩证据不够充分，本

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院不予采纳。原告的诉讼请求缺乏法律依据，依法应予以驳回。
 依照《中华人民共和国专利法》第五十六条第二款、《中华人民共和国专利法实施细则》第二条第三款、1997年2月17日《最高人民法院关于不属于外观设计专利的保护对象，但又授予外观设计专利的产品是否保护的请示答复》和《最高人民法院关于民事诉讼证据的若干规定》第二条的规定，判决如下：

驳回原告的诉讼请求。

本案受理费人民币 [REDACTED] 元，由原告负担。

如不服本判决，可在判决书送达之日起十五日内，向本院递交上诉状，并按对方当事人的人数提出副本，上诉于广东省高级人民法院。

审 判 长： [REDACTED]

审 判 员： [REDACTED]

审 判 员： [REDACTED]



书 记 员： [REDACTED]

本件与原本核对无异
 校对人 [REDACTED]

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商标代理委托书 POWER OF ATTORNEY

TM7

中华人民共和国 _____ : _____
*To the _____ of the
 People's Republic of China*

我厂 Ulysses Chemical Company 是 美 国 国 籍 ， 依
 _____ 国法律组成，现委托 _____
 代理 Ulysses 商标的如下“√”事宜。

*We, Ulysses Chemical Comapny corporation organized
 and existing under the law of Delaware, U.S.A. hereby entrust
 _____ to act on behalf of me/us to apply in the
 People's Republic of China, in relation to my/our Ulysses trademark.*

for:

- | | |
|-------------------------------------|--|
| <input type="checkbox"/> 注册 | <input type="checkbox"/> registration |
| <input type="checkbox"/> 续展注册 | <input type="checkbox"/> renewal of registration |
| <input type="checkbox"/> 转让注册 | <input type="checkbox"/> assignment of registration |
| <input type="checkbox"/> 变更注册人名义 | <input type="checkbox"/> modification of name of registrant |
| <input type="checkbox"/> 变更注册人地址 | <input type="checkbox"/> modification of address of registrant |
| <input type="checkbox"/> 补发商标注册证 | <input type="checkbox"/> reissuance of registration certificate |
| <input type="checkbox"/> 注销注册商标 | <input type="checkbox"/> removal of the registration |
| <input type="checkbox"/> 证明 | <input type="checkbox"/> obtaining certified copies |
| <input type="checkbox"/> 异议 | <input type="checkbox"/> raising an opposition |
| <input type="checkbox"/> 商标使用许可合同备案 | <input type="checkbox"/> recording a licence contract |
| <input type="checkbox"/> 商标侵权纠纷案件 | <input checked="" type="checkbox"/> dealing with infringement case |
| <input type="checkbox"/> 其它事项 | <input type="checkbox"/> others |

委托人
 Name of Applicant _____

Signature (签署): _____
 [Seal (if any) (章戳)]

Name(名称): _____

地址
 Address _____

Title(职衔): _____

On _____, 200_____

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委託書 (一)

委託单位名称:

法定代表人 :

职务 :

委託代理人 : _____ (中华人民共和国居民身份证号码:
_____) 地址: 香港中环遮打道历山大厦
七楼茲委託_____ (中华人民共和国居民身份证号码: _____) 为本
公司与_____ 纠纷一案中的代理人。代理权限: 代为调查、出庭、提供证据、自行和解; 代为承认、变更、放弃、
撤销诉讼请求; 代为提起反诉、提出上诉、申请执行; 代为签署有关文书; 转
委託权等。_____
(盖章)

法定代表人签署: _____

日期: _____

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委託書 (二)

委託单位名称:

法定代表人 :

职务 :

委託代理人 : _____ 律師事務所 _____ 律師

地址:

茲委託 _____ 律師事務所 _____ 律師為本公司與 _____ 糾紛一案中的代理人。

代理權限：代為調查、出庭、提供證據、接受調解、自行和解；代為承認、變更、放棄、撤銷訴訟請求；代為提起反訴、提出上訴、申請執行；代為簽署有關文書；代為提起訴訟、轉委託權等。

(蓋章)

法定代表人簽署: _____

日期: _____

**JOINT VENTURE COMPANY
INFORMATION CHECKLIST**

1. Project proposal, feasibility study and application for approval of establishment of the Joint Venture Company
2. Joint venture contract documentation (including all appendices)
3. MOFTEC or designated approval authority approval document
4. Governmental opinions and/or approvals regarding any of the following:
 - land use
 - supply of raw and auxiliary materials
 - localization and sourcing of components
 - utilities supply
 - transportation
 - customs
 - import of equipment
 - import of raw materials, components
 - VAT
 - tax holidays
 - import / export license requirements
 - export / domestic sales ratio
 - special export obligations or agreements
 - export-oriented enterprise status
 - high-tech enterprise status
 - balancing of foreign exchange
 - environmental permits
 - special transport and disposal agreement or arrangements (for waste materials)
labor
 - construction of the facilities
5. Business License and enterprise registration documentation
6. Tax registration
7. Capital contribution verification certificate; ownership interest certificate
8. Copy of Articles of Association currently in effect and on file with Administration of Industry and Commerce
9. Land use certificate; contract of land use rights
10. Minutes and resolutions of the Board of Directors

11. Copies of material agreements or arrangements:
 - Sales transactions (including backlog)
 - Purchasing/Sourcing transactions (including utilities supply)
 - Loan agreements and debt instruments, and related security or pledge agreements; documentation of other banking arrangements
 - Guarantees
 - Leases
 - Technology agreements or licenses
 - Agreements with shareholders or their affiliates, including but not limited to
 - supply of infrastructure, goods and services
 - technology support
 - management support
 - personnel support
12. Financial Information:
 - Copies of past financial statements of the Joint Venture Company
 - Present tax basis of the Joint Venture Company assets
 - Copies of all tax returns for the current and past years
13. Organization chart and list of all employees
14. Copies of employment contracts and any union or collective bargaining agreement
15. Copies of agreements or arrangements that may limit the ability of the Joint Venture Company to compete in any line or business with any person or in any particular area
16. List of all pending or threatened litigation and governmental investigations, identifying the parties to such litigation or investigation, the nature of the claim, and the amount at issue
17. List and description of past and current investigations, proceedings, violations and lawsuits, if any, regarding environmental matters
18. List of real property and personal property owned or leased, together with any security interests or encumbrances thereon
19. List of intangibles, if any (trademarks, trade names, copyrights, patents, service marks and applications therefor used by the Joint Venture Company)
20. Description of significant transactions undertaken
21. List of all insurance policies and summary of claims
22. Copies of any company policies, labor or otherwise
23. Other corporate and statutory books or records of the Joint Venture Company not listed above

DUE DILIGENCE OVERVIEW

In reviewing the documentation and materials listed in the "Information Checklist", each function should do so with the following key items in mind:

Sales / Marketing

1. How does the Company go to market?
 - (a) Directly?
 - (b) Does it use distributors or sales agents? If so, who?
 - (c) Who calls on customers?
 - (d) Does the Company have its own independent sales force?
 - (e) Is there any contact between the Company's sales force and the sales force of the Chinese partner?
 - (f) Will there be an overlap with our existing sales force? How will we integrate the two sales forces if this becomes necessary?
 - (g) Are there any improper payment concerns?
 - (h) Is there any contact with competitors? Any fair trade or antitrust concerns?
2. Describe the Company's major customers and volumes
3. Is there a pricing strategy?
4. Are there sourced products that we can supply or arrange for the supply of?
5. How is the sales force compensated? Fixed vs variable?
6. Should we validate our findings with customers of the Company?

Finance

1. Cash flow is critical
2. Look for debt, including non-traditional forms of debt (receivables/invoices sold or discounted, checks outstanding, unfunded pensions, leases, long-term or past due payables, deferred payments)
3. Understand price, productivity, inflation
4. Check for use of reserves or inventory (changes in costing methods) as a means of manipulating earnings
5. Strip out non-recurring items (one-time events, orders, etc.); check "Other Income"
6. Look at export transactions and understand the currency rate implications
7. Understand financial relationships between the Company and its two current shareholders
8. Normalize earnings per our accounting policies

9. Does the Company have an adequate IT infrastructure to support finance?

Manufacturing

1. Capacity and condition of P&E
2. Validate claimed speeds and yields
3. Contingency plan if forced to relocate
4. Plan to increase capacity in existing facility
5. Quality
6. Environmental, health and safety: what needs to be done to be compliant with Chinese law and/or our internal standards?
7. Manufacturing costs / target costs: Measurement and comparison to our costs and world costs

Technology

1. Strengths and weaknesses of product design and manufacturing processes
2. Any R&D pipeline?
3. Organization/people: level of education, expertise, cost, turnover
4. IP rights
5. Engineering and design documentation: how is it managed/controlled?

Sourcing

1. Degree of vertical integration?
2. What products are sourced?
3. Who are the vendors?
4. Quality?
5. Competitive bidding process?
6. Supplier qualification process?

Human Resources

1. Understand *all* labor costs, including benefits such as
 - (a) Housing
 - (b) Pension
 - (c) Health
 - (d) Welfare
 - (e) Unemployment Insurance
2. Compensation levels vs market levels
3. Union role
4. Collective bargaining agreement and individual labor contracts
5. Ability to reduce workforce; severance payment requirements
6. Organization chart
7. Legal environment: need to understand National, Provincial and local legislative/regulatory framework

Legal

1. Understand the business: detailed document review per information request
2. Compliance environment and culture: interview key management staff (GM, DGM and Managers of Sales, Manufacturing, Personnel/Admin, Technology, Finance)
3. Sales Contracts:
 - (a) Warranty commitments
 - (b) Delivery commitments and liquidated damages for delivery delay
 - (c) Limitations of Liability (overall cap; exclusion of consequential damages)
 - (d) Dispute resolution and governing law
 - (e) Ability of customer to terminate or suspend
 - (f) Ability of The Company to terminate or suspend
4. Sourcing Contracts:
 - (a) Exclusivity commitment by the Company? Sole suppliers?
 - (b) Government suppliers? (e.g. utilities)
 - (c) Partner as supplier?
 - (d) Warranty / remedies
 - (e) Delivery commitments
 - (f) Ability to terminate
 - (g) Term (same supplier for many years without change?)
5. Labor Contracts (collective and individual):

- (a) Ability to terminate
 - (b) Severance obligations
 - (c) Ability to modify / amend
 - (d) Application of National, Provincial and/or local laws
6. Contracts with third parties (consultants, design institutes, advisors, reps, agents, brokers, customs clearance agents, etc.)



**ENVIRONMENT, SAFETY AND HEALTH
SURVEY QUESTIONNAIRE
JANUARY 2001**

This questionnaire has been designed for use during the implementation of ITT Industries’:

- **Quantitative Environmental Survey Program (QESP), and**
- **Due Diligence Program (for both acquisitions and divestitures).**

It replaces two separate questionnaires, “Environmental Survey Questionnaire” and “Medical, Environment Health and Safety Questionnaire”.

Facility:

GENERAL INSTRUCTIONS

A questionnaire should be completed for each facility. All responses to questions should be complete and any supporting information should be attached to the questionnaire. If additional space is needed to respond to any questionnaire item, please attach extra sheets with the letter and number identifying the response clearly marked for each item.

QESP INSTRUCTIONS

- Complete sections I. through XI.

DUE DILIGENCE INSTRUCTIONS

- For acquisitions, complete all sections. (Note: This includes a basic compliance assessment and requires the assessor to have basic knowledge of compliance auditing.)
- For divestitures, complete sections I. through XII.
- For use with the "Office Only Checklist", complete sections I. through XIII.

Date: ____/____/____

I. GENERAL INFORMATION

- A. 1. Facility name:
 2. Site is ____ owned or ____ leased (check one).
 3. Where applicable, identify which corporate entity owns the Site.
- B. Location:
1. Street:
 2. City:
 3. County:
 4. State/Province:
 5. Zip code/Country Mail Code:
- C. Key facility personnel:
- 1 Site/facility manager:
 2. Operations or production manager:
 3. Environmental coordinator:
- D. Total number of employees at facility:
- E. Date of construction of facility. (If completed in steps, or over a period of time, when
 were various stages completed?)
- F. Facility floor space (include multiple floors in calculation):
- G. Site Size
 Circle One: (a) Acres (b) Hectares
- H. Provide a street map for a 3-mile radius of the site, with site clearly marked or highlighted.
 Maps should indicate north and scale.

- I. Provide a map ("as built" or "record" drawings, sketch, etc.), showing the location of the site, boundaries, and contiguous properties. Provide a hand-drawn sketch if drawings are not available. Maps should indicate north and scale.
- J. Name, title, phone number and employer of individuals who provided information for this questionnaire:
1. Name/Title:
 2. Phone/Dates of Employment:
 3. Area of Knowledge:
 4. Current Employer (if different than current owner of the facility):
1. Name/Title:
 2. Phone/Dates of Employment:
 3. Area of Knowledge:
 4. Current Employer (if different than current owner of the facility):
1. Name/Title:
 2. Phone/Dates of Employment:
 3. Area of Knowledge:
 4. Current Employer (if different than current owner of the facility):
- K. Excluding those identified above in Item J, list the names, titles, and phone numbers of formerly employed personnel who have integral knowledge of past facility activities:
1. Name/Title:
 2. Phone/Dates of Employment:
 3. Area of Knowledge:
 4. Current Employer (if different than current owner of the facility):

Question K continued

1. Name/Title:
 2. Phone/Dates of Employment:
 3. Area of Knowledge:
 4. Current Employer (if different than current owner of the facility):
1. Name/Title:
 2. Phone/Dates of Employment:
 3. Area of Knowledge:
 4. Current Employer (if different than current owner of the facility):
1. Name/Title:
 2. Phone/Dates of Employment:
 3. Area of Knowledge:
 4. Current Employer (if different than current owner of the facility):

Attach additional sheets if necessary

- L. Identify current and past owners of the site. Specify dates of ownership and use of site, including by operators other than the owner, during that period of ownership. If the site is/was leased, also show dates of occupancy. Trace the history of the site back to vacant land, if possible.

1. Owner/Dates:
2. Site Usage:

1. Owner/Dates:
2. Site Usage:

1. Owner/Dates:
2. Site Usage:

1. Owner/Dates:
2. Site Usage:

M. Type of activity at site (check appropriate blanks):

- Abrasive blasting
- Acid/alkali cleaning
- Adhesive bonding
- Air pollutant filtration/scrubbing
- Anodizing
- Asbestos handling
- Assembly operations
- Bleaching
- Casting of metal parts
- Chemical formulation/synthesis
- Degreasing/solvent cleaning
- Drilling/machining
- Dye/pigment formulation
- Fabric milling/spinning/weaving
- Glass/ceramic production
- Grinding/polishing/buffing
- Hazardous waste storage/treatment/disposal
- Ionizing radiation source
- Lasers
- Metal forging/stamping/forming
- Mining
- On-site waste disposal
- Packaging
- Pesticide production
- Photographic developing/printing
- Plastic formulation/extrusion/blow molding
- Plating
- Printing
- RF/Microwave heating
- Rubber formulation/vulcanization
- Semiconductor production
- Soldering/brazing
- Solid/liquid waste recycling/recovery
- Spray painting
- Underground storage tanks
- Waste water treatment
- Welding

- Woodworking
- Wood treatment
- Other activities of concern (specify)

- N. Facility Standard Industrial Classification (SIC) Code:
- O. Contiguous Properties – List current and past facility names, addresses, and activities conducted for contiguous properties. Indicate any hazardous materials that may be or have been utilized. Also, identify these sites on the map requested in question H above.

North

Facility:
Address:
Activities:
Hazardous materials used:
Known Environmental Issues/Investigation/Cleanup:

South

Facility:
Address:
Activities:
Hazardous materials used:
Known Environmental Issues/Investigation/Cleanup:

East

Facility:
Address:
Activities:
Hazardous materials used:
Known Environmental Issues/Investigation/Cleanup:

West

Facility:
Address:
Activities:
Hazardous materials used:
Known Environmental Issues/Investigation/Cleanup:
Attach additional pages if necessary

7. LAST TESTED FOR LEAKS:
8. TEST RESULTS:
9. SECONDARY CONTAINMENT: Yes/No. If Yes, describe type and capacity.
10. OVERFILL PROTECTION: Yes/No.
11. LEAK DETECTION (specify type):

Tank No.

1. TANK DESIGNATION:
(E.G., REGISTRATION NUMBER, IF APPLICABLE)
2. TANK TYPE: ABOVE BELOW
3. TANK SIZE:
4. TANK CONTENTS:
5. TANK STATUS:
 ACTIVE REMOVED INACTIVE
6. DATE OF INSTALLATION:
7. LAST TESTED FOR LEAKS:
8. TEST RESULTS:
9. SECONDARY CONTAINMENT: Yes/No. If Yes, describe type and capacity.
10. OVERFILL PROTECTION: Yes/No
11. LEAK DETECTION (specify type):

B. ON-SITE FUELING

Identify any on-site vehicle refueling areas, if any. Mark locations on the site map requested in Section I. Question I.

C. HAZARDOUS MATERIALS STORAGE

List the hazardous materials (including waste oil) that are stored at the facility, whether virgin materials, blended products, or otherwise, and the type of containers used to store these materials, excluding the materials stored in tanks identified in this Part II, Section A above. If possible, indicate storage locations on the site map requested in Section I. Question I.

1. Hazardous material:
 2. Material identification number/CAS number (if known):
 3. Volume stored:
 4. Storage container:
 5. Monthly rate of usage:
 6. Proper Labeling: Yes/No
 7. Secondary Containment: Yes/No (describe)
-
1. Hazardous material:
 2. Material identification number/CAS number (if known):
 3. Volume stored:
 4. Storage container:
 5. Monthly rate of usage:
 6. Proper Labeling: Yes/No
 7. Secondary Containment: Yes/No (describe)

1. Hazardous material:
2. Material identification number/CAS number (if known):
3. Volume stored:
4. Storage container:
5. Monthly rate of usage:
6. Proper Labeling: Yes/No
7. Secondary Containment: Yes/No (describe)

D. PCBs.

Are there now, or have there ever been, any of the following items or systems, in use or stored on the site, that contain or use PCBs?

1. Transformers
2. Capacitors
3. Electromagnets
4. Hydraulic systems
5. Ballasts
6. Other:

If yes, please identify all items or systems:

E. ENVIRONMENTAL EMERGENCY PREPAREDNESS

1. Has the facility notified the State Emergency Response Commission (SERC) that is subject to SARA section 302 due to storage of Extremely Hazardous Substances (EHS) above the Threshold Planning Quantity (TPQ)?
2. Has the facility submitted MSDSs or a listing of hazardous materials to the SERC, Local Emergency Planning Committee (LEPC), and local fire department?
3. Has the facility submitted Hazardous Chemical Inventory (Tier II) Reports under SARA Section 312?
4. Has the facility submitted Toxic Chemical Release (Form R) Reports under SARA Section 313?
5. Has the facility been visited to review SARA compliance?
6. Has the facility developed and implemented a plan to be implemented in the event of a release of hazardous material?
Is the plan a Spill Prevention Control and Countermeasures (SPCC) Plan?

III. RELEASES, SPILLS, LEAKS

List any releases, spills, leaks of hazardous materials (including wastes) as defined in CERCLA or RCRA at the site, through spills or leaks to air, soil, and/or surface or groundwater. Fill in blanks as indicated, attach additional pages, if needed. Indicate locations on map requested in Section I.

Question I.

- 1) Date:
 Material:
 Quantity:
 Location:
 Regulatory agencies notified:

 Clean-up description:
- 2) Date:
 Material:
 Quantity:
 Location:
 Regulatory agencies notified:

 Clean-up description:
- 3) Date:
 Material:
 Quantity:
 Location:
 Regulatory agencies notified:

 Clean-up description:
- 4) Date:
 Material:
 Quantity:
 Location:
 Regulatory agencies notified:

 Clean-up description:

IV. ENVIRONMENTAL STUDIES/REPORTS

List all studies, if any, performed to determine (1) the existence or extent of impacts to groundwater or soil, and (2) the community or health impact of materials or activities at the site, and whether or not a report was submitted to the regulatory authorities. **Please attach copies of all studies.**

Indicate the date(s) on which each study was conducted.

Study date:
Study scope:

Please attach additional pages if necessary.

V. WASTE MANAGEMENT INFORMATION

A. WASTE GENERATED

List each waste produced at the facility (currently or in the past) that is classified by any regulatory agency as hazardous. Indicate storage locations and mark locations on the site map requested in Section I. Question I. Indicate current monthly generation rate.

Hazardous Waste:
Storage Location:
Monthly Generation Rate:

Hazardous Waste:
Storage Location:
Monthly Generation Rate:

Hazardous Waste:
Storage Location:
Monthly Generation Rate:

Attach additional pages if necessary.

Indicate if the facility is classified as a:

- Conditionally Exempt Small Quantity Hazardous Waste Generator _____
- Small Quantity Hazardous Waste Generator _____
List USEPA Identification Number:
- Large Quantity Hazardous Waste Generator _____
List USEPA Identification Number:

B. OFF-SITE TREATMENT, STORAGE OR DISPOSAL FACILITY (TSDF) LOCATIONS

Identify the off-site facilities where hazardous waste is (or was) treated, stored, or disposed. Include the corresponding TSDF locations, dates, and transporters used. Also, indicate the approximate amount sent to each TSDF.

- 1) Waste:
TSDFs:
Locations:
Transporters:

Dates used:
Amount sent:

2) Waste:
TSDFs:
Locations:
Transporters:
Dates used:
Amount sent:

3) Waste:
TSDFs:
Locations:
Transporters:
Dates used:
Amount sent:

Attach additional pages if necessary.

C. ON-SITE TSDF LOCATIONS

List and describe any on-site areas of the facility, such as pits, ponds, lagoons, sumps, trenches, dry wells, drums, or landfills (past or present), used for the treatment, storage, or disposal of any type of waste material. Indicate the locations on the site map requested in Section I. Question I.

*For any on-site areas identified, state whether the treatment, storage or disposal unit is active, inactive or closed. If inactive or closed, state what, if any, closure activities were conducted.

1) Waste:
Location:
Dates used:
Generated rate:
Permit: Yes/No (Provide all permitting information requested in Part IX.)

2) Waste:
Location:
Dates used:
Generated rate:
Permit: Yes/No (Provide all permitting information requested in Part IX.)

3) Waste:
Location:
Dates used:
Generated rate:
Permit: Yes/No (Provide all permitting information requested in Part IX.)

4) Waste:
Location:
Dates used:
Generated rate:

Permit: Yes/No (Provide all permitting information requested in Part IX.)

Attach additional pages if necessary

VI. AIR EMISSIONS

Identify any air emission sources, any required air emission limitations for the facility and indicate whether the source is operating within limitations. Also, identify any emissions monitoring conducted, the frequency of the monitoring, and emissions-reduction equipment (e.g., scrubbers, paint booth filters, fume incinerators, etc.).

1. Source:
2. Amount:
3. Composition (specify if a regulated hazardous air pollutant):
4. Air emission limitations:
5. Parameter monitored:
6. Frequency of monitoring:
7. Reduction equipment (include date of installation):
8. Permit: Yes/No (Provide all permitting information requested in Part IX.)

1. Source:
2. Amount:
3. Composition (specify if a regulated hazardous air pollutant):
4. Air emission limitations:
5. Parameter monitored:
6. Frequency of monitoring:
7. Reduction equipment (include date of installation):
8. Permit: Yes/No (Provide all permitting information requested in Part IX.)

1. Source:
2. Amount:
3. Composition (specify if a regulated hazardous air pollutant):
4. Air emission limitations:
5. Parameter monitored:
6. Frequency of monitoring:
7. Reduction equipment (include date of installation):
8. Permit: Yes/No (Provide all permitting information requested in Part IX.)

With respect to the above sources:

- Have there been any significant changes in emission levels, operating practices, or production levels since obtaining any of the above permits?
- Does the facility intend to increase production, add any new process, or expand in a way that would increase emissions to the atmosphere?

Attach additional pages if necessary

VII. ASBESTOS

1. Are asbestos containing materials (ACM) present at the facility? If yes, please describe type and quantity.

2. Has an asbestos survey of the facility been conducted? If yes, please attach a copy of the survey.
3. Does the facility have an asbestos operation and maintenance plan? Please provide a copy.

VIII. WATER

A. Wastewater

List all wastewater streams generated at the facility.

Source:

Composition:

Subject to on-site wastewater treatment prior to discharge? Describe.

Effluent Limitations:

Frequency of monitoring:

Discharge Location:

Permit: Yes/No (Provide all permitting information requested in Part IX.)

Source:

Composition:

Subject to on-site wastewater treatment prior to discharge? Describe.

Effluent Limitations:

Frequency of monitoring:

Discharge Location:

Permit: Yes/No (Provide all permitting information requested in Part IX.)

Source:

Composition:

Subject to on-site wastewater treatment prior to discharge? Describe.

Effluent Limitations:

Frequency of monitoring:

Discharge Location:

Permit: Yes/No (Provide all permitting information requested in Part IX.)

With respect to the above wastewaters:

- Have there been any significant changes in wastewater composition, operating practices, or production levels since obtaining any of the above permits?
- Does the facility intend to increase production, add any new process, or expand in a way that would increase the quantity or change the composition of the wastewater stream?

Attach additional pages if necessary

B. Septic Systems

Is there, or has there ever been, a septic system on the site? If so, describe briefly. Show locations on the map requested in Section I. Question I.

C. Facility Drainage and Stormwater Discharge

Does the facility have any floor drains or drywells? If so, show the points of origination and discharge locations on the map requested in Section I. Question I.

1. Provide any sewer and drain line maps indicating locations of piping, dry wells, septic fields, discharge points, etc.
2. Does the facility have an individual stormwater permit?
Have coverage under a general stormwater permit?
Maintain a Stormwater Pollution Prevention Plan (SWPPP)?

D. Water Supply

How is water supplied to the site (private well, public distribution system, bottled, etc.)? What is the end use for water from each source (potable, production, etc.)?

Source:
End use:

Source:
End use:

Source:
End use:

E. On-Site Wells

List all water wells on site, and whether or not they have been abandoned. Indicate well locations on the map requested in Section I. Question I.

1. Well:
2. Depth:
3. Age:
4. Intended use:
5. Parameters analyzed, if any:

1. Well:
2. Depth:
3. Age:
4. Intended use:
5. Parameters analyzed, if any:

1. Well:
2. Depth:
3. Age:
4. Intended use:
5. Parameters analyzed, if any:

Attach additional pages if necessary

IX. ENERGY

1. What type of fuel (i.e., oil, gas) is used at the facility?
2. Are there any back-up generators?
3. Are there any utility contracts with suppliers in effect? If so, state the duration of the contract and attach a copy.

X. PERMITS

State the issuing agency, type, and identifying number of all environmental permits, licenses or other types of permission required, whether currently in effect or not, to conduct a particular operation at the site (for example, wastewater treatment, or hazardous waste disposal) pertaining to that listing.

Issuing regulatory agency:
 License and ID number:
 Expiration date:
 Site operation/Equipment/Process:

Issuing regulatory agency:
 License and ID number:
 Expiration date:
 Site operation/Equipment/Process:

Issuing regulatory agency:
 License and ID number:
 Expiration date:
 Site operation/Equipment/Process:

Issuing regulatory agency:
 License and ID number:
 Expiration date:
 Site operation/Equipment/Process:

Issuing regulatory agency:
 License and ID number:
 Expiration date:
 Site operation/Equipment/Process:

XI. COMPLAINTS, VIOLATIONS, ORDERS, DEMANDS

1. List any occupational exposure claim by a current or former employee and the disposition of the claim.
 - a. Date Received:
 - b. Action Taken:
 - c. Current status:

2. List any civil or administrative enforcement actions against the company for environmental violations, including, but not limited to, notice of violations, regulatory orders, directives, or consent decrees.
 - a. Date Received:
 - b. Action Taken:
 - c. Current Status:
3. List any criminal investigations for environmental violations, including, but not limited to, subpoenas, notice letters, indictments, plea agreements, orders.
 - a. Date Received:
 - b. Action Taken:
 - c. Current status:
4. List any private party demands, claims or lawsuits against the company relating to environmental matters or hazardous materials, including any cost recovery lawsuits.
 - a. Date Received:
 - b. Action Taken:
 - c. Current status:
5. Identify if the company has been identified as a potentially responsible party (PRP) at any off-site disposal site, drum recycling facility or other facility or site.
 - a. Date Received:
 - b. Action Taken:
 - c. Current status:
6. Answer questions 1 through 5 above **with regard to any previously owned entities or facilities operated by the company**, and for each such claim, suit, demand provide the following information.
 - a. Type of Claim/Action:
 - b. Date Received:
 - c. Action Taken:
 - d. Current status:

XII. PREVIOUSLY OWNED ENTITIES OR FACILITIES

- A. List each previously owned entity or facility operated by the company.
 1. Provide dates of ownership or operation.
 2. Provide facility location/address.
 3. Describe nature of the operations.
 4. Identify which corporate entity owned the divested entity or previously operated at the sold/closed/vacated facility.
- B. Provide copies of any contract of sale for any previously owned or operated entities, facilities or property.

XIII. OTHER SIGNIFICANT NON-COMPLIANCE ITEMS. TO BE COMPLETED FOR DUE DILIGENCE ON ANY POTENTIAL ACQUISITION.

Please describe any items of obvious or significant non-compliance at the facility with environmental, health and safety regulations or ITT practices, which have not already been discussed in any other section of this questionnaire. Note that a full compliance audit is not intended as part of this Questionnaire. However, significant non-compliance issues at a facility can result in significant costs that need to be factored into any potential acquisition.

XIV. MEDICAL, HEALTH AND SAFETY

A. Environmental Health and Safety Policies. Provide a copy of any such policies.

B. Employee Health and Safety

1. Provide copies of all accident records and OSHA 200 log.
2. How many workman compensation claims does the facility have in the average year (over the past three years)?
3. Describe the facility OSHA incident rate and how it compares with its industry for the past three years.
4. How many employees are currently on long term, short term, and light work duty at the facility?
5. Does the facility have a history of Carpal Tunnel Syndrome?
6. List job classifications and number of employees for which personal protective equipment is required. Attach copies of appropriate personal protective equipment programs.
7. Does the facility have a hearing conservation program?
8. How many employees participate in the hearing conservation program? Attach a copy of the program.
9. List all formal and informal safety and health training programs that are conducted.
10. Is there a safety committee? Who serves on it and what are its activities?
11. Are job safety analysis (JSA) and accident investigation programs implemented? Attach copies of programs or forms.
12. What safety statistics are collected routinely? Attach copies of recent reports, if available.
13. How are supervisor's and manager's safety performance evaluated?
14. What type and frequency of inspection and maintenance is performed for conveyors, overhead hoists and cranes, ladders, and exhaust ventilation systems?
15. Describe the type, location, and quantity of flammable storage at this facility.

16. What type of fire protection system is used (fixed, portable, wet-pipe, dry-pipe, foam, deluge, etc.)? What type and frequency of inspection and maintenance is performed?
17. If the facility is sprinklered, what mechanism (watchman, water flow alarms, contracted monitoring services, etc.) is used to alert plant personnel and the fire department that sprinklers have been triggered? What is the water source for the sprinkler system (city main, on-site tanks, surface water, etc.)? Is there a back-up source?
18. What percentage of employees are trained in the use of fire extinguishers? Is there a trained fire brigade? A trained emergency response team?
19. With what frequency are emergency evacuation or fire drills held?
20. Does the facility perform periodic worker exposure monitoring?
21. Are worker exposure levels below acceptable Threshold Limit Values (TLVs)?
22. When was the last inspection by OSHA or the state occupational safety and health agency?
23. Have any OSHA citations been received in the past five years?
24. Have any OSHA inspections been conducted as a result of employee complaints?
25. Has the facility ever experienced a fatality?
26. Does the facility use any Ionizing Radiation, lasers, Radio frequency Radiation, or Ultraviolet Radiation sources?

C. MEDICAL ISSUES

1. Type of Occupational Medicine Program:

	<u>YES</u>	<u>NO</u>
• In plant services (Specify number of staff)		
- Physician	_____	_____
- Nurse (specify if RN or LPN)	_____	_____
- Certified First Aider	_____	_____
- Certified emergency medical technician (EMT)	_____	_____
- None	_____	_____
• Off-Site Medical Arrangements (provide names of professionals or company)		
- Physician		
- Nurse (specify if RN or LPN)		
- Other		

2. Program Components

	<u>YES</u>	<u>NO</u>
• Pre-employment/preplacement examinations	_____	_____
• Periodic Health examination	_____	_____

Specify employee groups _____

- Medical surveillance, including Biological monitoring (i.e., blood, urine testing)

Type of program(s) _____

- Drug Testing

Pre-employment	_____	_____
For cause	_____	_____
Random	_____	_____

- Treatment of Non-Occupational Illness (other than through an employee benefits plan)
Specify if service is provided to employee only or employee's family. _____

- Immunizations _____

- Health promotion programs _____

- Employee assistance program (counseling services) _____

4. Medical Information

- Medical files are maintained in accordance with accepted guidelines on confidentiality and separate from personnel files _____

- Employees are assured access to occupational exposure and medical records _____

Code of Occupational Disease Prevention of PRC

No. 60 Order by President of PRC

The Code of Occupational Disease Prevention of PRC, adopted in the 24th Session of the Standing Committee of the Ninth People's Congress on October 27, 2001, is now promulgated for enforcement from May 1, 2002.

Jiang Zemin, President of PRC

October 27, 2001

Code of Occupational Disease Prevention of PRC

(Adopted in the 24th Session of the Standing Committee of the Ninth People's Congress on October 27, 2001)

Content

- Chapter 1 General
- Chapter 2 Proactive prevention
- Chapter 3 Prevention and Management of Occupational Diseases in the Work
- Chapter 4 Occupational Disease Diagnosis and Safeguard for Occupational Disease Victims
- Chapter 5 Supervision and Inspection
- Chapter 6 Legal Liability
- Chapter 7 Supplement

Chapter 1 General

Article 1 This Code is enacted in accordance with the provisions of the *Constitution* in a bid to prevent, control and eradicate occupational diseases, prevent occupational diseases, protect the health and the rights of laborers and boost economic development.

Article 2 This Code applies to the occupational-disease-prevention activities within the territory of PRC.

“Occupational disease” hereunder refers to the diseases incurred to the laborers of enterprises, institutions and private business units (hereinafter referred to as “Employer”) resulted from contacting with powder dust, radioactive substances, other poisonous and harmful substances in the work.

The public health authorities and the labor & social security authority under the State Council (will enact, adjust and promulgate the categories and catalogs of occupational diseases

Article 3 The prevention of occupational diseases should follow the guideline of prevention first and prevention & treatment combination, and stand to the categorized management and comprehensive treatment.

Article 4 Laborers are entitled to occupational health and occupation protection in accordance with the applicable laws.

The Employer shall create the workplace and conditions in compliance with the state occupational-health standard and requirement, and take appropriate measures to ensure occupational health and occupational protection.

Article 5 The Employer shall put into practice the well-structured responsibility system for occupational disease prevention, strengthen the management on the occupational disease prevention, elevate the level of occupational disease prevention and be liable for the in-house occupational diseases.

Article 6 The Employer shall effect the policy covering the work-related injuries according to applicable laws.

The labor and social security authority under the State Council and county-above people's governments should strengthen the supervision and management of the social security covering work-related injuries in an effort to guarantee laborers' legal right of work-related injury insurance.

Article 7 Chinese Government encourages the research, development, popularization and application of the new technology, process and material beneficial to the prevention of occupation disease and the health of laborers, encourages the fundamental research on the causes and rules of occupational diseases, supports the advancement of occupational-disease-prevention technologies, advocates effective utilization of technology, process and material facilitating occupational disease prevention, and restricts or prohibits the use of technology, process and material severely impairing occupational health.

Article 8 Chinese Government shall enforce the policy for occupational health supervision.

The public health authority under the State Council is responsible for the supervision and administration of the nationwide prevention of occupational diseases. The competent authorities under the State Council shall be responsible for the supervision and administration of occupational disease prevention according to their respective administrative duties.

The public health authorities under the county-above people's governments are responsible for the supervision and administration of the occupational disease prevention within their jurisdiction. Competent authorities under the county-above people's governments shall be responsible for the supervision and administration of occupational disease prevention according to their respective administrative duties.

Article 9 The State Council and the county-above people's governments should map out the plans for occupational disease prevention that are woven into the national

socioeconomic development plan, and should be responsible for the enforcement of the above plans.

The township-level people's governments should rigidly enforce this Code and support the public health authorities to perform their duties according to applicable laws.

Article 10 The public health authorities under county-above people's governments and other competent authorities should boost the public awareness and education in occupational disease prevention, publicize the knowledge for occupational disease prevention, boost the Employer's awareness of occupational disease prevention and the laborers' awareness of the health protection.

Article 11 The public health authority under the State Council shall work out and promulgate the state standard of occupation health for the purpose of preventing against occupational diseases.

Article 12 Any organization and individual are entitled to impeach and accuse any practices in violation of this Code. Reward will be given to the organizations and individuals for their outstanding achievement in occupational disease prevention.

Chapter 2 Proactive prevention

Article 13 The occupational-disease-inductive Employer should adhere to the stipulations of laws and regulations with regard to the set-up of organizations and create the workplace up to the following occupational health requirements:

13.1 The intensity or concentration of the occupational-disease-inductive substances should comply with the national standard of occupational health;

13.2 Adoption of appropriate occupational-disease-prevention facilities;

13.3 Rational production layout in compliance with the principle of separating harmful from harmless operations;

13.4 Deployment of associated sanitations like dressing room, bathhouse and the rest room for the pregnant;

13.5 The equipment, tools and appliances should comply with the requirement for protecting the well being of laborers;

13.6 Laws, regulations and other regulations protecting laborers' health stipulated by the public health authority under the State Council.

Article 14 The public health authorities shall establish the procedure for the Employer to declare the occupational-disease-inductive businesses and operations.

The Employer engaged in the occupational-disease-inductive business that tends to give rise to the occupational diseases included in the state checklist of occupational diseases should declare to the competent public health authorities and accept their supervision.

The specific measures for the declaration in connection therewith are to be worked out by the public health authority under the State Council.

Article 15 For any new/expansion/modification projects, technical modification projects and technology introduction project (hereinafter referred to as "Construction Project") that has high occupational disease exposure, the responsible organizations should, in the feasibility study phase, submit the report for pre-assessment of occupational-health harm to the competent public health authority, which, within thirty (30) days after the receipt of the report stated hereinabove, shall notify the said organization the written decision thereof. It is not allowed to approve any Construction Project that has not submitted the above pre-assessment report or has suffered the denial of the pre-assessment report by the competent public health authority.

The pre-assessment report of occupation-health harm shall indicate the Construction Project's occupational-disease-inductive factor, its influence on the workplace and laborer health, and determine the type of harm and prevention measures against the occupational diseases.

The catalogs of occupational diseases and the categorized administrative measures for the Construction Project are to be worked out by the public health authority under the State Council.

Article 16 The expense of the occupational-disease-prevention facilities for any Construction Project shall be counted into the engineering budget of the Construction Project, and the occupational-disease-prevention facilities should be designed, engineered and put into operation concurrently with the main body of the project.

It is not allowed to start any Construction Project with very high occupational disease exposure unless the competent public health authority has certified that the Construction Project complies with the state standard and requirement on occupational health.

The undertaking organization should carry out the assessment of the occupational-disease-prevention measures before the final acceptance of the Construction Project. No Construction Project shall be put into operation without having its occupational-disease-prevention facilities accepted by the public health authority upon the acceptance of the Construction Project.

Article 17 The pre-assessment of the occupational-disease-inductive factors and the assessment of occupational-disease-prevention measures should be undertaken by occupational-health technical service organizations approved by the public health authorities under province-above people's governments. The assessment organization should make objective and impartial assessment.

Article 18 Chinese Government will exercise special administrative measures to the radioactive and highly poisonous operations. The specific measures are to be enacted by the State Council.

Chapter 3 Prevention and Management of Occupational Diseases in the Work

Article 19 The Employer shall take the following measures for prevention and management of occupational diseases.

19.1 Set up or appoint the occupational health management organizations or agencies staffed with full-time or part-time medical professionals for the in-house occupational disease prevention;

19.2 Provide for the occupational-disease-prevention plan and the enforcement plan;

19.3 Establish/improve the occupational health management system and operating rules;

19.4 Establish/maintain occupational health archives and laborer health records;

19.5 Establish/improve the system for supervision and assessment of the workplace occupational-disease-inductive factors;

19.6 Establish/improve contingency plan for occupational-disease-inductive accidents.

Article 20 The Employer should deploy effective occupational-disease-prevention facilities and provide the laborers with the individual-used occupational-disease-prevention articles.

Any occupational-disease-prevention article provided to the laborer by the Employer should comply with the applicable regulations of occupational disease prevention. It is not allowed to use any occupational-disease-prevention article failing the applicable regulations.

Article 21 The Employer should give priority to the new technologies, new processes and new materials beneficial to the occupational disease prevention and the laborers' health in place of the occupational-disease-inductive technologies, processes and materials step by step.

Article 22 The occupational-disease-inductive Employer shall publicize the regulations, operating rules, contingency measures upon occupational-disease-inductive accidents and the testing results of the workplace occupational-disease-inductive factors in the conspicuous bulletin board.

It is also required to post conspicuous warning mark and the warning message in Chinese at the workplace severely harming the occupational health. The warning message should indicate the type, aftereffect, prevention and contingency measures of the occupational-disease-inductive factors.

Article 23 At the poisonous and harmful workplace prone to contingent occupational injuries, the Employer is required to install alarm units, on-site first-aid articles, rinsing facility, emergency exit and necessary risk-elimination area.

For radioactive workplace and the transportation and storage of radioactive isotope, the Employer should equip risk-prevention equipment and alarm devices, and ensure the employees exposed to radiation equipped with dose meter.

The Employer should make regular maintenance, overhaul and test of the occupational-disease-prevention equipment, first-aid facilities and individual-used occupational-disease-prevention articles to ensure their smooth operation. It is not allowed to remove or stop the above occupational-disease-prevention facilities without the approval of competent authorities.

Article 24 The Employer should appoint respective employee to make routine supervision over occupational-disease-inductive factors and ensure the normal operation of the monitoring systems.

The Employer should make regular test and assessment on the occupational-disease-inductive factors in the workplace according to the regulation of the public health authority under the State Council. The assessment result shall be logged into the Employer's occupational health archive for regular submission to local public-health authority and for release to the laborers.

The test and assessment of occupational-disease-inductive factors should be undertaken by occupational-health technical service organizations who are approved by the public health authorities under province-above people's governments. The assessing organization should be objective and justified in the test and assessment.

In the event that the occupational-disease-inductive factors in the workplace fail to comply with the national standard and requirement of occupational health, the Employer should take immediate countermeasures, which, if failing to eradicate the problem, should necessitate immediate discontinuation of the operation concerned. The discontinued operation should not be restored unless the occupational-disease-inductive factor is accredited consistent with the national standard and requirement of occupational health.

Article 25 Any occupational-disease-inductive equipment supplied to the Employer shall be accompanied with a user manual in Chinese as well as the conspicuous warning mark and warning message in Chinese. The warning message should indicate the performance, the occupational-disease-inductive factors, precautions for safe operation and maintenance, occupational disease prevention and contingency measures, etc.

Article 26 The occupational-disease-inductive chemical, radioactive isotope and radioactive substances supplied to the Employer should be accompanied with the users instructions in Chinese that indicate the product characteristics, major ingredients, harmful factors and possible aftereffect, safety precautions, occupational prevention and contingency measures, etc. The package should bear the conspicuous warning mark and warning message in Chinese. The storage place of the above substances should be equipped with the warning mark for hazardous materials or radioactive materials at the specified spot.

For any occupational-disease-inductive chemical that is used or imported for the first time in China, the responsible organizations should procure the approval from the competent authorities under the State Council according to the state regulation, and submit the toxicity appraisal report, related registration documents or import permit and other necessary documents to the public health authority under the State Council.

The importation of the radioactive isotope, radiation equipment and other radioactive materials should come up to applicable state regulations.

Article 27 No organizations or individuals are allowed to produce, operate, import and use any equipment or materials prohibited by the state regulations owing to its harm to occupational health.

Article 28 No organizations or individuals are allowed to transfer the occupational-disease-inductive operation to other organizations or individuals without qualified occupational-disease-prevention conditions, which, in turn, are prohibited from accepting the operation indicated hereinabove.

Article 29 The Employer should gain an understanding of occupational-disease-inductive factors of the technology, process and material in internal use, and be liable for the occupational disease victims due to the illegal use of the occupational-disease-inductive technology, process and material without advising the concerned people of the occupational-disease-inductive factors.

Article 30 The Employer is required to inform the laborers of the potential occupational-disease-inductive factors and the aftereffect in the work as well as the occupational-disease-prevention measures and remuneration among other related information before the execution of labor contract (including the employment contract, the same below). It is also required to completely and accurately record the above information in the labor contract.

In the event of transferring the laborer during the labor-contract term to the occupational-disease-inductive post that is not indicated in the labor contract due to the change of post or duty, the Employer should faithfully reveal to the laborer the information indicated hereinabove and consult with the laborer for modifying the related provisions of the existing labor contract.

In the event that the Employer fails to comply with the provisions in the Article 30, the laborer may refuse to undertake the occupational-disease-inductive post, which shall not be used by the Employer as the excuse to invalidate or terminate the labor contract concerned.

Article 31 The principals of the Employer shall undergo the occupational health training, adhere to the occupational-disease-prevention laws and regulations, and organize the in-house occupational-disease-prevention work according to applicable laws.

The Employer should provide the regular pre-employment/on-job occupational health training to laborers, popularize the occupational health knowledge, supervise/urge the laborers to comply with the laws, regulations, rules and operating rules for occupational

disease prevention, instruct the laborers for the correct utilization of occupational-disease-prevention equipment and individual-used occupational-disease-prevention articles.

Laborers should gain the necessary occupational health knowledge, abide by the laws, regulations, rules and operating rules for occupational disease prevention, use/maintain the occupational-disease-prevention equipment and individual-used occupational-disease-prevention articles in the right way, and promptly report the potential hazard of occupational-disease-inductive accident.

The Employer shall rectify the laborer's activities running against the above provisions.

Article 32 According to the regulation of the public health authority under the State Council, the Employer should, at its own cost, proceed with the pre-employment/on-job/pre-departure physical examination for the laborers engaged in the occupational-disease-inductive operation and faithfully inform the laborers of the examination result.

The Employer is prohibited from assigning the laborers to the occupational-disease-inductive operation before undertaking pre-employment physical examination or assigning the taboo-bound laborers to the taboo operations. In addition, the Employer should also transfer the laborer suffering the work-related disease found in the occupational health examination to other post. Moreover, the Employer is prohibited from invalidating or terminating the labor contract of any laborer not undergoing pre-departure occupational health examination.

The occupational health examination should be conducted by the healthcare agencies approved by the public health authority under the province-above people's government.

Article 33 The Employer is required to create and maintain the occupational health record for laborers within the stipulated period.

The occupational health record should include the laborer's employment history, occupational-disease-inductive work record, occupational health examination result and occupational-disease medical treatment among other individual health records.

Upon leaving the Employer, the laborer is entitled to claim for the copy of his (her) own occupational health record. Upon the request, the Employer should faithfully furnish the stamped record for no charge.

Article 34 The Employer should undertake prompt contingency and control measures upon the actual (or potential) contingent occupational-disease-inductive accidents and promptly report to the local public-health authority and related organizations, which, upon the receipt of the report, should join with related organizations for investigation and treatment and take interim control measures when necessary.

The Employer shall, at its own cost, promptly rescue/cure the laborers suffering from the contingent occupational diseases or exposed to the possibility of contingent occupational diseases, and arrange physical examination and medical treatment therefor.

Article 35 The Employer is prohibited from assigning child labor to the occupational-disease-inductive operation or assigning the female laborers in pregnancy or lactation period to the operation harmful to the health of the embryos or babies.

Article 36 The laborers are entitled to the following occupational-health-protection rights:

36.1 The opportunity of occupational health education and training;

36.2 The occupational-disease-prevention services like occupational health examination, occupational disease diagnosis and rehabilitation;

36.3 Understand the actual (or possible) occupational-disease-inductive factors, their harmful effect and necessary occupational-disease-prevention measures in the workplace;

36.4 Ask the Employer to provide the occupational-disease-prevention equipment and individual-used occupational-disease-prevention articles to improve the working conditions;

36.5 Criticize, impeach and accuse the practices that violate occupational-disease-prevention laws and regulations and harm human health;

36.6 Deny the illegal orders and commands to undertake the operation without the safeguard of occupational-disease-prevention measures;

36.7 Participate in the democratic management of the Employer's occupational health work, and bring forward comments and suggestions with regard to the occupational-disease-prevention operation.

The Employer should ensure that the laborers may exercise the above rights. Such practices as reducing remuneration package, invalidating or terminating the labor contract due to the laborer's exercise of legal rights are deemed invalid.

Article 37 The labor union should urge and assist the Employer to carry out the occupational health education and training, bring forward comments and suggestions for the Employer's occupational-disease-prevention operation, coordinate with the Employer to solve the problems echoed by the laborers with regard to the occupational disease prevention.

The labor union is entitled to: demand rectification of the Employer's practices in violation of the occupational-disease-prevention laws and regulations or infringing against the laborers' legal rights; require the Employer to take prevention measures or suggest the competent government agencies to take compulsive measures upon the occurrence of severe occupational-disease harm; get involved in the investigation and settlement of the occupational-disease-inductive accidents; suggest the Employer to remove the laborers from the hazardous site upon the occurrence that endangers the life and health of the laborers. Upon the request of the labor union, the Employer should adopt prompt measures therefor.

Article 38 The Employer can include the occupational-disease-prevention expenses in the production costs according to applicable regulations, including the expenses for prevention/treatment of occupational-disease-inductive factors, workplace hygiene

inspection, health custody and occupational health training, etc.

Chapter 4 Occupational Disease Diagnosis and Safeguard for Occupational Disease Victim

Article 39 The diagnosis of occupational disease should be undertaken by the medial organizations approved by the public health authority under the province-above people's government.

Article 40 The laborer can have the occupational disease diagnosed by the occupational-disease-specific healthcare agency at the location of the Employer or at the residential place of the laborer.

Article 41 The public health authority under the State Council will provide for the occupational-disease diagnosis standard/measures and occupational-disease appraisal measures. The measures for the appraisal of occupational-disease-related disability classes should be provided for by the labor and social security authority under the State Council.

Article 42 The diagnosis of occupational diseases should take the following factors into consideration:

42.1 The patient's work record;

42.2 Occupational-disease-inductive work record and the investigation/comment of the workplace harm;

42.3 Clinical symptoms and auxiliary examination results, etc.

Provided that there is no evidence denying the absolute relation between the occupational-disease-inductive factors and the patient's clinical symptoms, it can be determined that the patient is suffering from occupational disease in case that other nosogeneses have been excluded.

The responsible healthcare agencies should arrange at least three medical practitioners certified for the qualification of occupational-disease diagnosis to diagnose the occupational diseases.

The occupational disease certificate should be jointly signed by all participating physicians and stamped by the responsible healthcare agency.

Article 43 Upon identification of the patients suffering from occupational diseases or occupational-disease-like diseases, the Employer and healthcare agencies should report to the local public-health authority. The Employer should also report to the local labor & social security authority about the diagnosed occupational disease.

The public health authority and the labor & social security authority should resolve the problem according to applicable laws.

Article 44 The public health authority under the county-above people's government is responsible for the administration of the occupational-disease statistics/report within

its administrative jurisdiction and report to line authorities according to applicable regulations.

Article 45 In case of disagreement with the occupational-disease diagnosis, the party concerned can apply to the public health authority under the people's government in the locus of the responsible healthcare agency.

Upon the request by the party concerned, the public health authority under the people's government above the level of district-constituted municipalities should organize the occupational-disease-diagnosis appraisal committee to appraise the occupational disease in dispute.

In case of disagreement with the appraisal result made by the occupational-disease-diagnosis appraisal committee under the district-constituted municipalities, the party concerned can apply to the public health authority under the people's government of provinces, autonomous regions and centrally administered municipalities for reappraisal.

Article 46 The occupational-disease-diagnosis appraisal committee should consist of the experts in related study fields.

The public health authority under the people's government of provinces, autonomous regions and centrally administered municipalities should set up related expert pool, which enables the party concerned or the public health authority entrusted by the party concerned to randomly choose the experts to constitute the appraisal committee.

The occupational-disease-diagnosis appraisal committee should comply with the occupational-disease-diagnosis standard/measures and occupational-disease appraisal measures promulgated by the public health authority under the State Council to appraise the diagnosis of occupational disease and grant the appraisal certificate for occupational-disease diagnosis to the party concerned. The Employer should bear the cost thereof.

Article 47 The members of the occupational-disease-diagnosis appraisal committee should adhere to the professional ethics to ensure objective and just appraisal and bear the liability therein. The members of the occupational-disease-diagnosis appraisal committee are prohibited from contacting with the party concerned in private, accepting the bribery or other benefits of the party concerned. The committee members having interest relations with the party concerned should be excluded from the appraisal concerned.

For the appraisal of the occupational diseases involved with the cases handled by the people's court should be undertaken by the experts randomly selected from the legally-established expert pool by the public health authority under the people's government of provinces, autonomous regions and centrally administered municipalities.

Article 48 The Employer, laborers and related organizations should faithfully furnish any information in connection with occupational health and health custody needed for the diagnosis and appraisal of occupational diseases.

Article 49 Any healthcare agency identifying the patient suffering from the occupational-disease-like diseases should promptly notify the laborer concerned and his (her) Employer.

The Employer should have the patient concerned diagnosed in time. It is not allowed to invalidate or terminate the labor contract with the said patient during the diagnosis and medical treatment period.

The Employer should bear the cost of the diagnosis and medical treatment of the patient concerned.

Article 50 The occupational-disease victims are entitled to the occupational-disease-related treatments and allowances in accordance with the state regulations.

The Employer should have the occupational-disease victims treated, rehabilitated and regularly examined in accordance with applicable regulations.

The Employer should remove the occupational-disease victims unfitting the existing work from the former occupational-disease-inductive post.

The Employer should pay appropriate post allowance to the laborers engaged in the occupational-disease-inductive operation.

Article 51 The treatment and rehabilitation expenses of the occupational-disease victims and the social security premiums for disabled/labor-disabled occupational-disease victims should be reimbursed according to the state regulations applicable to the social security for work-related injuries.

Article 52 Apart from the social security for the work-related injuries, the occupational-disease victim who is entitled to compensation according to applicable civil laws can claim for compensation from the Employer.

Article 53 In case that the laborer has been identified as the occupational-disease victim and the Employer has not effected the policy covering work-related injuries, the current Employer should bear the victim's medical cost and living cost. Provided that the current Employer can prove that the said occupational disease is resulted from the occupational-disease-inductive factors of the former Employer, the former Employer should bear the cost thereof.

Article 54 The occupational-disease victim changing workplace can also enjoy the existing treatments and allowances for occupational-disease victims.

The Employer, upon divest, merge, dissolution and bankruptcy, should make physical examination for the laborers engaged in occupational-disease-inductive operation and properly settle the occupational-disease victims according to applicable regulations.

Chapter 5 Supervision and Inspection

Article 55 The public health authority under the county-above people's government should, based on their respective duties, be responsible for the supervision and inspection of the occupational-disease-prevention work and the inspection/assessment of occupational-disease-inductive factors according to the occupational-disease-

prevention laws and regulations, as well as applicable standards and requirements on occupational health.

Article 56 When performing the duty of supervision and inspection, the public health agencies are entitled to carry out the following measures:

56.1 Enter into the inspected organizations and occupational-disease-inductive workplace for field investigation and evidence gathering;

56.2 Refer to or copy the materials in connection with the practices violating the occupational-disease-prevention laws and regulations and make sampling therefor;

56.3 Order the organizations and individuals violating the occupational-disease-prevention laws and regulations to stop the illegal practice.

Article 57 In case of the occupational-disease-inductive accidents or it is proved that the occupational-disease-inductive factors may lead to occupational-disease-inductive accidents, the competent public health authority can take the interim control measures as follows:

57.1 Order the party concerned to stop the operation leading to occupational-disease-inductive accidents;

57.2 Seal up the material and equipment that lead to or may lead to occupational-disease-inductive accidents;

57.3 Keep the occupational-disease-inductive accident site under control.

Upon the effective control of the occupational-disease-inductive accidents or the harmful scenario, the public health agencies should remove the control measures in time.

Article 58 The persons engaged in occupational health supervision/law-enforcement should hold the supervision/law-enforcement certificate when performing their legal duties.

The persons engaged in occupational health supervision/law-enforcement should perform their duties faithfully and justly, rigidly adhere to the law-enforcement regulations and keep confidentiality of the trade secrets of the Employer.

Article 59 The inspected organizations should accept the inspection by the occupational health supervision/law-enforcement personnel and coordinate with the personnel therein. It is not allowed for the inspected organization to refuse and hinder the inspection.

Article 60 The public health agencies and the persons engaged in occupational health supervision/law-enforcement are prohibited from the following practices when performing their duties:

60.1 Issue project certifications, qualification certifications or approval to the organizations failing to meet legal conditions;

60.2 Fail to perform the duty of supervision and inspection to the organizations having procured the legal certificates;

60.3 Fail to take prompt control measures against the Employer who harbors occupational-disease-inductive factors or may give rise to occupational-disease-inductive accidents;

60.4 Be liable for other practices against this Code.

Article 61 The persons engaged in occupational health supervision/law-enforcement should gain the qualification approval.

The public health authority should strengthen the team building, elevate the political and operation-related qualification of the occupational health supervision/law-enforcement personnel, establish/improve the in-house supervision system according to this Code and other applicable laws and regulations, and supervise/inspect the enforcement of the laws, regulations and disciplines.

Chapter 6 Legal Liability

Article 62 The construction organization liable for one of the following practices will be warned by the competent public health authority for correction within the specified period; failure to correct the concerned practices within the specified period is subject to a fine between RMB 100,000 yuan and RMB 500,000 yuan; severe illegal practices are subject to the compulsory discontinuation of the occupational-disease-inductive operation or discontinuation/shut-up of the operation by the competent people's government according to the authority granted by the State Council:

62.1 Fail to make pre-assessment of occupational-disease-inductive factors or submit the pre-assessment report of occupational-disease-inductive factors as regulated, or start the operation without having the pre-assessment report of occupational-disease-inductive factors approved by the competent public health authority;

62.2 The occupational-disease-prevention facilities are not put into operation together with the main body of the project as regulated;

62.3 The design of the occupational-disease-prevention facilities of the Construction Project severely harmful to occupational health fails to comply with the applicable standard and requirement of the occupational health;

62.4 Use occupational-disease-prevention facilities without assessing the occupational-health-harm control effect of the occupational-disease-prevention facilities or without/failing the inspection of the public health authority;

Article 63 The organization or individual liable for one of the following practices will be warned by the competent public health authority for correction within the specified period; failure to correct the concerned practices within the specified period is subject to a fine of RMB 20,000 yuan:

63.1 Fail to record, report and release the inspection and assessment result of the workplace occupational-disease-inductive factors;

63.2 Fail to take the occupational-disease-prevention measures according to Article 19 hereunder;

63.3 Fail to publicize the regulations, operating rules, contingency measures upon occupational-disease-inductive accidents in connection with occupational-disease prevention as regulated;

63.4 Fail to deliver occupational health training to laborers or fail to make instruction and supervision to ensure the adoption of individual-used occupational-disease-prevention measures;

63.5 For any occupational-disease-inductive chemical that is used or imported for the first time in China, the responsible organization fails to submit the toxicity appraisal report, related registration documents or import permit to the competent authorities.

Article 64 The Employer liable for one of the following practices will be warned by the competent public health authority for correction within the specified period in addition to a fine between RMB 20,000 yuan and RMB 50,000 yuan:

64.1 Fail to faithfully and promptly declare the occupational-disease-inductive factors to the competent public health authorities;

64.2 Fail to carry out the routine monitoring of the occupational-disease-inductive factors charged by designated employee, or fail to ensure the normal operation of the monitoring system;

64.3 Fail to inform the laborers of the true effect of the occupational-disease-inductive factors at conclusion or modification of labor contracts;

64.4 Fail to arrange the occupational health examination, fail to establish the occupational health record or fail to faithfully inform the laborer concerned of the examination result.

Article 65 The Employer liable for any of the following violation against this Code will be ordered by the competent public health authority for correction within the specified period; failure to correct the violating practices within the specified period is subject to a fine between RMB 50,000 yuan and RMB 200,000 yuan; severe illegal practices are subject to the compulsory discontinuation of the occupational-disease-inductive operation or discontinuation/shut-up of the concerned organizations by the competent people's government within the authority awarded by the State Council:

65.1 The intensity or concentration of the occupational-disease-inductive substances does not meet the national standard of occupational health;

65.2 Fail to provide the occupational-disease-prevention facilities and the individual-used occupational-disease-prevention articles, or provide the occupational-disease-prevention facilities and the individual-used occupational-disease-prevention articles failing to meet the state standard and requirement of occupational health;

65.3 Fail to maintain, overhaul and inspect the occupational-disease-prevention facilities, first-aid facilities and individual-used occupational-disease-prevention articles,

or fail to maintain the smooth operation and normal status of the above facilities as regulated;

65.4 Fail to inspect and assess the occupational-disease-prevention factors at the workplace as stipulated;

65.5 Fail to treat the occupational-disease-inductive factors up to the state standard and requirement of occupational health, or fail to stop the operation harboring occupational-disease-inductive factors;

65.6 Fail to have the occupational-disease patients or the patients suffering from the occupational-disease-like diseases treated as regulated;

65.7 Fail to take contingency/control measures or fail to promptly report to the competent authorities upon the actual (potential) contingency occupational-disease-inductive accidents;

65.8 Fail to post the conspicuous warning mark and warning message in Chinese at location of the post severely harmful to occupational health as regulated;

65.9 Refuse the supervision and inspection of the public health authority.

Article 66 The individual or organization who supplies the Employer with the occupational-disease-inductive equipment and materials without furnishing the user manual in Chinese or the warning mark and warning message in Chinese is subject to the order of the competent public health authority for correction within the specified period in addition to a fine between RMB 50,000 yuan and RMB 200,000 yuan.

Article 67 The Employer and the healthcare agency failing to report the occupational diseases and occupational-disease-like diseases as stipulated are subject to the order of the competent public health authority for correction within specified period in addition to a fine of RMB 10,000 yuan; any fraudulent act is subject to a fine between RMB 20,000 yuan to 50,000 yuan; the directly-responsible executives and other directly-responsible personnel are subject to such disciplinary practices as post-lowering or dismissal.

Article 68 Any party liable for any of the following violation against this Code is subject to the order of the competent public health authority for correction within the specified period in addition to a fine between RMB 50,000 yuan and RMB 300,000 yuan; severe violating practices are subject to the compulsory discontinuation of the occupational-disease-inductive operation or shut-up of the occupational-disease-inductive organization by the competent people's government within the authority granted by the State Council:

68.1 Use the occupational-disease-inductive technology, process or material without informing the concerned party or the competent authority of the occupational-disease-inductive factors;

68.2 Deliberately conceal the actual occupational-health conditions;

68.3 The poisonous, harmful or radioactive workplace is prone to contingent occupational injuries or the transportation/storage of radioactive isotope fails to meet the provision of Article 23 hereinabove;

68.4 Use the occupational-disease-inductive equipment or material prohibited by laws and regulations;

68.5 Transfer the occupational-disease-inductive operation to the organizations or individuals not qualified for the occupational-disease-prevention conditions; or the organizations or individuals not qualified for the occupational-disease-prevention conditions undertake the occupational-disease-inductive operation;

68.6 Remove or stop the operation of the occupational-disease-prevention equipment or first aid facilities;

68.7 Assign the laborers without occupational-health examination, taboo-bound laborers, child labor or the female laborers in pregnancy or lactation to the occupational-disease-inductive operation or taboo operation;

68.8 Illegally order and force the laborers to the operation without taking occupational-disease-prevention measures.

Article 69 Any one engaged in the production, operation or import of the occupational-disease-inductive equipment or material prohibited by Chinese Government is subject to the penalties as stipulated by applicable laws and administrative regulations.

Article 70 In the event that the Employer's practice against the provisions hereunder has resulted in severe harm to the laborer's health, the competent public health authority may order the Employer to stop the occupational-disease-inductive operation or apply to the competent people's government to shut up the occupational-disease-inductive operation within the authority granted by the State Council in addition to a fine between RMB 100,000 yuan to RMB 300,000 yuan.

Article 71 In the event that the Employer has committed crime by giving rise to severe occupational-disease-inductive accidents or other severe damages on account of the violation against this Code, the directly-responsible executives and other directly-responsible personnel should be liable for the criminal liability.

Article 72 In the event that the organizations or individuals provide the occupational-health technical services without obtaining the qualification thereof, or any healthcare agencies undertake occupational health examination and occupational-disease diagnosis without statutory approvals, the competent public health authority can order the responsible organizations or individuals to immediately stop the violating practice, and confiscate the illegal income therefrom; any organization or individual gaining an illegal income over RMB 5,000 yuan is also subject to a fine equaling 2 to 10 times of the illegal income; any organization or individual gaining no illegal income or an illegal income less than RMB 5,000 yuan is also subject to a fine between RMB 5,000 and RMB 50,000 yuan; the executives and other personnel directly responsible for the

severe illegal practices are subject to such disciplinary actions as post-lowering, deposal or dismissal according to applicable regulations.

Article 73 In the event that any organization engaged in occupational-health technical service or occupational-health examination and occupational-disease diagnosis is held responsible for any of the following practices, the competent public health authority can order the responsible organization to immediately stop the illegal practice, and confiscate the illegal income therefrom; the organization gaining an illegal income over RMB 5,000 yuan is also subject to a fine equaling 2 to 5 times of the illegal income; the organization gaining no illegal income or an illegal income less than RMB 5,000 yuan is also subject to a fine between RMB 5,000 and RMB 20,000 yuan; the organization liable for severe illegal practice will be deprived of the operating qualification by the original certification or approval organizations; the executives and other personnel directly responsible for the severe illegal practices are subject to such disciplinary actions as post-lowering, deposal or dismissal according to applicable regulations; any people liable for the illegal practice constituting a crime will be subject to the criminal liability:

73.1 Provide occupational-health technical service or undertake occupational-health examination and occupational-disease diagnosis not covered in the qualification certification or business scope;

73.2 Fail to perform the legal obligations according to the provisions hereunder;

73.3 Furnish counterfeited certificates.

Article 74 The member of the occupational-disease-diagnosis appraisal committee accepting the bribery or other benefits from the party involved in a dispute is subject to the warning of competent authority, and the bribery will be confiscated; the liable member may also be subject to a fine ranging from RMB 3,000 yuan to RMB 50,000 yuan, or be deprived of the qualification for acting as the member of the occupational-disease-diagnosis appraisal committee, and be deleted from the expert pool established by the public health authority under the people's government of the provinces, autonomous regions and centrally administered municipalities.

Article 75 In the event that any public health authority fails to report the occupational diseases and occupational-disease-inductive accidents as regulated, the upper-level public health authority will order the liable public health authority for correction in addition to notice of criticism; the principals, executives and other personnel directly responsible for any inaccurate report or deliberate concealment of actual conditions are subject to such disciplinary actions as post-lowering, deposal or dismissal.

Article 76 In the event that any public health authority and its occupational-health supervision/law-enforcement personnel are liable for one of the practices as set out in Article 60 hereunder, which gives rise to occupational-disease-inductive accident and constitutes a crime, the responsible public health authority and its occupational-health supervision/law-enforcement personnel will be subject to criminal liability; provided that the practice does not constitute a crime, the public health authority's principal, executives and other personnel directly responsible for the practice are subject to such disciplinary actions as post-lowering, deposal or dismissal.

Chapter 7 Supplement

Article 77 In this Code, the following terms shall have the meaning as follows:

Occupational-disease-inductive harm: the harms giving rise to occupational diseases to the laborers engaged in occupational activities. Occupational-disease-inductive factors include the various harmful chemical, physical and biologic factors harbored in the occupational activities and other occupational-disease-inductive factors in the operation.

Occupational taboo: specific laborers that are more prone to the harm of occupational-disease-inductive factors or the occupational diseases than average laborers or may suffer severer diseases as a result of undertaking specific occupation or coming into contact with occupational-disease-inductive factors, or may be conducive to the individual-specific psychological or pathological status that may endanger the life and health of others as a result of undertaking the occupational-disease-inductive operation.

Article 78 Any occupational-disease-inductive organizations except for the employers as set forth in Article 2 hereunder may conduct the occupational-disease-prevention activities according to this Code.

The measures for the PLA to enforce this Code will be enacted by the State Council and the Central Military Commission of PRC.

Article 79 This Code will be enforced as of the date of May 1, 2002.

<<Safe Production Law of the People's Republic of China>>

Decree No. 70 of the Chairman of the People's Republic of China

Promulgation Date: <pd> 29th June 2002 </pd>

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Promulgated by: <pb> The Ninth National People's Congress </pb>

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Article 1 In order to strengthen the supervision and administration of production safety, to prevent and reduce the accidents, to guarantee the people's life and property safety, and to promote the economic development, this law is hereby enacted.

Article 2 This Law shall apply to the production safety involving the units engaged in production operations within the territory of the People's Republic of China (hereinafter referred to as the "production operation units"). The relevant laws and administrative regulations concerning fire protection safety, road traffic safety, railway traffic safety, marine traffic safety and civil aviation safety shall also apply if available.

Article 3 The administration of production safety shall comply with the guideline of "safety and precaution first."

Article 4 Production operation units shall abide by this Law, other laws and administrative regulations on production safety, strengthen the control over production safety, establish and perfect liability system of production safety, improve safety conditions, and ensure production safety.

Article 5 The personnel chiefly in charge of production operation units shall take overall responsibility for their own production safety.

Article 6 The employees of production operation units shall obtain the right of guaranteeing the production safety, and meanwhile fulfill the obligations as regards production safety according to law.

Article 7 The Labor Union shall call on the employees to participate in democratic management and supervision to safeguard the lawful rights and interests in the matter of production safety.

Article 8 The State Council and local people's governments at all levels shall strengthen the guidance of production safety work, support and oversee all the relevant departments to fulfill their responsibility for safety control and supervision according to law.

Article 9 The State Council department in charge of the control and supervision of production safety shall carry out the overall supervision and administration of production safety throughout the nation according to law; the departments of the people's local governments at and above the county level in charge of the control and supervision of production safety shall according to law carry out the overall supervision and administration of production safety within their administrative divisions.

According to this Law and the provisions of other laws and administrative regulations, the departments concerned in the State Council shall control and oversee the production safety within their own responsibility range; the departments concerned in the local people's governments above the county level shall control and oversee the production safety within their individual responsibility range in accordance with this Law and the provisions of other laws and administrative regulations.

Article 10 The State Council departments concerned shall according to law constitute forthwith national standards or trade standards based on the requirements of production safety guaranties, and make timely revisions in the light of technological and economic development.

Production operation units shall carry out the national standards or trade standards guaranteeing production safety established according to law.

Article 11 The people's governments at all levels and the relevant departments shall adopt various means to strengthen the laws and provisions concerning production safety and widen the publicity of production safety knowledge, and improve the employees' awareness of production safety.

Article 12 The intermediary organs established according to law, shall, entrusted by the production operation units, supply technological services for production safety work in accordance with the laws, administrative regulations and license guidelines.

Article 13 The State carries out legal liability for the accidents and track down the legal liability of the personnel blaming for the accidents in accordance with this Law and other relevant laws and provisions.

Article 14 The State encourages and supports the scientific and technological research on production safety and the popularization and dissemination of advanced technology so as to improve the production safety.

Article 15 The State rewards those units and individuals who make remarkable achievements in matters of improving production safety conditions, preventing accidents, and going in for risking and rescuing and so on.

Chapter II Production Safety Guaranties for Production Operation Units

Article 16 Production operation units shall possess production safety conditions as required by this Law, other relevant laws and administrative regulations, as well as national standards or trade standards. Whoever fails to provide safety conditions shall not engage in production operation.

Article 17 The personnel chiefly in charge of production operation shall take the following responsibilities for production safety in their units.

- (1) To establish and improve production safety responsibility system
- (2) To organize and establish safety regulations and operating principles.
- (3) To ensure effective enforcement of production safety in these units.
- (4) To supervise and examine production safety work in these units and to clear up the hidden hazards to safety in time.
- (5) To organize, frame and carry out the emergency rescue contingent proposals of these units.
- (6) To make a timely and true report of accidents.

Article 18 Production operation units shall be provided with capital investment indispensable to production safety conditions, guaranteed by policy-making body, the personnel chiefly in charge, or individual investors in these units, and bear responsibility for all the consequences arising from the shortage of capital investment.

Article 19 Mines, construction work units and units that manufacture, deal in, and store the dangerous articles shall establish safety regulatory agency, or supply full-time personnel in charge of the administration of production safety.

The other production operation units not provided in the preceding Paragraph, if involving more than 300 personnel, shall establish the production safety regulatory agency, or be supplied with full-time personnel in chare of the administration of production safety. Those with the personnel of less than 300 shall be provided with full-time or part-time personnel in charge of the control over production safety, or entrust the engineers holding the relevant professional skill qualifications with production safety management and service.

In the event that production operation units entrust the engineers to provide the safety management and service in accordance with the provision of the preceding Paragraph, these units shall take responsibility for ensuring production safety.

Article 20 The personnel chiefly in charge of production operation units and the staff engaging in the administration of production safety shall possess safety knowledge and operating capability corresponding to production operations they are engaged in.

The personnel chiefly in charge of units that manufacture, deal in, and store dangerous goods, and mines and construction work units and the staff in charge of the control of production

safety as well shall not hold the posts unless they pass the examination in safety knowledge and operating capability held by the relevant departments in charge. The examination must not be charged.

Article 21 Production operation units shall offer the employees instruction and training in production safety knowledge, ensuring that they are provided with necessary safety knowledge, that they are familiar with the relevant safety regulations and operating convention, and that they have a good command of operating safety skills in their own posts. Whoever does not undergo safety instruction and training shall not hold the posts.

Article 22 In case production operation units adopt new techniques, new technology, new materials or use new equipments, they shall understand and command the technical safety properties, adopt effective precautions against accidents, and provide the employees with special instructions and training in production safety knowledge.

Article 23 The special operating staff in production operation units shall not hold the posts unless they according to the relevant provisions of the State take part in the special training and obtain the qualification for this special operation.

The extent of special operating staff shall be defined by the State Council department in charge of safety supervision and administration, along with the other State Council departments concerned.

Article 24 The safety facilities involving new construction, reconstruction and expansion of the construction (hereinafter referred to as the "construction project") on the part of production operation units shall be designed, constructed, put on stream and put into use along with the principal part of the project at the same time. The investment in safety facilities shall be brought into budgetary estimate of construction project.

Article 25 Mining construction projects and those used for producing and storing dangerous substance shall undergo safety condition assessment and safety evaluation respectively according to the relevant provisions of the State.

Article 26 The designer and designing units for the safety facilities in the construction projects shall take responsibility for safety facility designing.

The safety facility designing for mining construction projects and those used for producing and storing dangerous articles according to the relevant provisions of the State shall be reported to the departments concerned for approval. The departments and the personnel in charge of examining the safety facility designing shall take responsibility.

Article 27 The construction work units undertaking mining construction projects and those used for producing and storing the dangerous articles shall carry out the work with the approved safety facility design and be held responsible for the quality of safety facilities.

Mining construction projects and those for producing and storing the dangerous articles shall be checked for safety in accordance with the relevant laws and administrative regulations before they come on stream or come into use. They shall not be used unless they pass the examination.

The departments and the personnel in charge of checking the safety facility shall take responsibility for the checking results.

Article 28 Production operation units shall install prominent danger warning signs in construction sites and the relevant equipments and facilities liable to hazards.

Article 29 The design, manufacture, installation, use, examination, maintenance, restructure and rejection of the safety facilities shall satisfy the national standards or trade standards.

Production operation units shall maintain and protect the safety facilities and equipments frequently and test them regularly, and guarantee their normal running. Maintenance, protection and examination shall be kept in records with the signatures of the personnel concerned.

Article 30 The special equipments, the containers and transportation tools of dangerous goods used by production operation units, which may threaten life safety and have higher risk factors shall not be put into use unless they are manufactured the appointed professional production units and pass the test as well as inspection organized by the inspection institutions with a professional level, in accordance with the relevant provisions of the State. The inspection institutions shall take responsibility for the results of examination and test.

The list of special equipments, threatening life safety and having higher risk factors, shall be made by the State Council departments in charge of special equipments supervision and administration, and be carried out after being reported to the State Council for approval.

Article 31 The State shall implement elimination system about some technics and equipments constituting a serious threat to production safety.

Production operation units shall not use the dangerous technics and equipments eliminated and prohibited by the State's public proclamation.

Article 32 Whoever manufactures, deals in, transports, stores, makes use of dangerous substance or disposes of the wasted dangerous goods shall be examined, approved and supervised by the departments concerned in accordance with the provisions of the relevant laws and regulations as well as national standards or trade standards.

In case production operation units manufacture, deal in, transport, store and make use of dangerous substance or dispose of the wasted dangerous goods, they shall conform to the relevant laws and regulations and meet national standards or trade standards, establish special safety system, adopt reliable safety measures, and accept the supervision and administration of the departments in charge.

Article 33 Production operation units shall keep serious hazard sources in records, make a regular check-up, evaluation and monitoring, frame the emergency rescue contingent proposal, and inform the employees and the personnel concerned of adopting emergency measures in case of emergency.

Production operation units shall report the serious hazard sources, the relevant safety measures and emergency measures to the local people's governments' departments in charge of the safety supervision and administration and the relevant departments for records.

Article 34 The workshops, stores and warehouses used to manufacture, deal in, store, and make use of dangerous substance shall not be placed with the staff quarter in the same building, and shall be kept away from the staff quarter in a safe distance.

The work sites and staff quarter shall be provided with exits, which meet requirements of emergency evacuation, have remarkable signs, and maintain unblocked.

Closing down and blocking out the exits of the work sites or staff quarters shall be prohibited.

Article 35 In case of the dangerous operations such as dynamiting and hoisting, production operation units shall assign the professional staff to supervise the on-the-spot safety and ensure operating rules are observed and safety measures are carried out.

Article 36 Production operation units shall instruct and supervise the employees to strictly carry out the safety regulations and operating safety rules and inform in truth the employees of the hazard factors, the preventive measures and emergency measures against accidents in the working sites and posts.

Article 37 Production operation units shall provide the employees with occupational preventive appliances, and supervise and instruct the employees to wear and use them according to service regulations.

Article 38 The personnel in production operation units in charge of production safety shall make regular checks of safety conditions in the light of the specialties of production operation. Once found, safety problems shall be handled at once. Otherwise, they shall be reported to the personnel in charge. The results of checking and handling of safety problems shall be put on records.

Article 39 Production operation units shall set aside the expenses for occupational preventive articles and training in production safety.

Article 40 More than two production operation units undertake projects in the same work site. In case of hazards to production of the other parties, they shall write agreements about the administration of production safety, define their own scope of responsibility and emergency measures needed, and appoint the professional staff in charge of production safety to check and coordinate.

Article 41 Production operation units shall not subcontract or lease projects, work sites and equipments to those units and individuals with the absence of safety conditions or of the corresponding professional level.

In the event that the projects and work sites involve several contractor units and leaseholder units, production operation units shall enter into a special contract about production safety administration with the contractor units and leaseholder units, or stipulate their own responsibility for safety in the contract for undertaking a project or in the contract for leasing. Production operation units shall coordinate and administer production safety among the contractor units and leaseholder units.

Article 42 In the event of big accidents occurring to production operation units, the personnel in charge shall organize the rescue at once, and shall not be absent without leave during the investigation of the accidents.

Article 43 Production operation units shall effect social employment injuries insurances according to law and pay insurance fees for their employees.

Chapter III The Rights and Obligations of the Employees

Article 44 Production operation units shall state the matters about the guaranties for the employees' safety and prevention against the occupational hazards, as well as the matter about effecting social employment injuries insurances for the employees according to law.

Production operation units shall not sign a contract with the employees to exempt them from or relieving them of liability for the casualties they shall take on according to law.

Article 45 The employees shall have the rights to know the hazard factors existing in work sites and posts, preventive measures and emergency measures against accidents, and have the rights to make proposals about production safety as well.

Article 46 The employees are entitled to bring forward suggestions for production safety in these units, impeach and charge against safety problems. They have rights to reject the instruction violating the regulations and the order of running risks to work.

Production operation units shall not lower the employees' salaries and welfare or terminate the labor contract because they make suggestions for safety work, impeach and charge against safety problems, or refuse to take orders violating the regulations and to run risks to work.

Article 47 Once the employees find out the emergencies endangering their lives, they have the rights to stop working, and withdraw from the working sites after the adoption of the possible emergency measures.

Production operation units shall not lower the employees' salaries and welfare or terminate the labor contract because the employees stop working or evacuate from the working sites in case of emergency mentioned in the proceeding provision.

Article 48 The employees injured in the accidents shall take the social insurance for the employment injuries according to law and have the rights to ask their work units for compensation as well if they are still entitled to obtain compensation in accordance with the relevant civil laws.

Article 49 The employees shall strictly abide by safety regulations and operating rules made by their work units, obey the order and wear and use labor protection articles correctly.

Article 50 The employees shall undergo instruction and training in safety knowledge, master safety knowledge needed in their work, improve their professional skills in production safety, and advance the capability of preventing accidents and dealing with emergencies.

Article 51 Once the employees find out hazard sources or the other unsafe factors, they shall report to the personnel in charge of on-the-spot production safety or the personnel in charge of their units. Those who receive the report shall deal with them immediately.

Article 52 The Labor Union is authorized to supervise and make proposals for putting the safety facilities in place simultaneously with the design, construction, production and operation of the major projects.

The Labor Union has the right to rectify the units' violation of the production safety laws and regulations and to rectify their encroachment upon the employees' lawful rights and interests. Production operation units shall give a timely study and reply of the proposals made by the Labor Union who discovers the units' violation of the regulations and order to risk working or finds out hazards sources. The Labor Union has the right to advise the units to organize and evacuate the employees whenever they find out the danger signals, and the units shall deal with them immediately.

The Labor Union has the right to join the investigation of the accidents according to law, put forward proposals to the relevant departments, and call for the prosecution of the staff concerned for their liability.

Chapter IV The Supervision and Administration of Production Safety

Article 53 The local people's governments at and above the county level, in the light of the production safety conditions in their own administrative districts, shall organize the relevant departments, based on the division of responsibility, to have a test and examination of the production operation units liable to serious accidents in their administrative districts.

Article 54 In accordance with the provision of Article 9 in this Law, the departments in charge of supervising and administering production safety (hereinafter referred to as the departments in charge of the supervision and administration of production safety), must strictly check, test or accept the matters concerning production safety, which call for examination and approval (including approval, sanction, license, registration, recognition, and issue of certificate), in accordance with the relevant laws and regulations and in conformity with the safety conditions and procedures as required by national standards or trade standards. Whoever fails to accord to the relevant laws and regulations or to satisfy the safety conditions stipulated by national standards or trade standards shall not be approved of and accepted. Whoever fails to be approved and accepted make bold to undertake the relevant productive activity shall be banned immediately and prosecuted according to law once they are caught or reported to the departments in charge of administrative check and approval. Those who gain the approval are found by the departments in charge of administrative examination and approval not to possess production safety conditions any longer, their sanction shall be withdrawn.

Article 55 The departments in charge of the supervision and administration of production safety shall not charge for the examination and acceptance of production safety matters. They shall not demand the units checked and accepted to buy the nominated brands, the safety facilities, equipments or other products made by the designated manufacturers and distributors.

Article 56 In the course of supervising and examining the fulfillment of the laws and regulations concerning safety and national standards or trade standards on the part of production operation units, the departments in charge of the supervision and administration of production safety may exercise the following powers according to law:

- (1) To enter into the production operation units to make the spot examination, to transfer the relevant materials, and learn relevant information from the units and personnel concerned.
 - (2) To make corrections on the spot or to order the parties concerned to make corrections with time limit when finding the illegal acts. To impose the illegal acts administrative sanction, in accordance with this Law and the relevant laws and administrative regulations.
 - (3) To order the parties concerned to eliminate the hidden risks of accidents found in the course of examination. To order the parties to evacuate the work staff from the dangerous areas and to stop business unless the hidden risks of accidents are eliminated or safety is guaranteed in the course of elimination. Production operation shall not be restored unless the hidden risks of accidents are eliminated and checked for approval.
 - (4) To close down or distrain upon the facilities and equipments not regarded as meeting national standards or trade standards for production safety on firm ground, and arrive at a decision within fifteen days according to law.
- The supervision and examination shall not interfere with the normal production operation of the examined parties.

Article 57 Production operation units shall cooperate with instead of refusing and hindering the personnel in the departments responsible for the supervision and administration of production safety (hereinafter referred to as the personnel in charge of supervising and examining production safety).

Article 58 The personnel in charge of supervising and examining production safety shall be devoted to their duty, stick to the principles, and handle matters impartially.

The personnel in charge of supervising and examining production safety shall produce their certificates when performing their duties of supervision and examination. They shall keep the technological secrets and operating secrets for the examined parties.

Article 59 The personnel in charge of supervising and examining production safety shall keep a written record for the time, place and content of examination and problems discovered and disposal of them. The examiner and the examined parties shall sign their names on it. If the examined units refuse to sign, the supervisory personnel shall put it on records and report it to the departments in charge of supervision and administration of production safety.

Article 60 The departments in charge of the supervision and administration of production safety shall cooperate with each other, and make a joint examination. If respective examination is needed, the departments concerned shall inform each other. When the safety problems pertaining to the other relevant departments are found, they shall be transferred to the departments concerned for records. The departments accepting the transfer shall deal with it in time.

Article 61 The supervisory bodies in accordance with administrative supervision regulations shall fulfill the duty of supervising the departments in charge of the supervision and administration of production safety and their staff.

Article 62 The institutions undertaking the task of safety evaluation, recognition, test and inspection shall be provided with the specified professional conditions and shall be held responsible for the results they conclude.

Article 63 The departments in charge of production safety shall establish system of reporting offences to the authorities, make public the telephone numbers, mail address, or e-mail address, and accept and hear a case reported concerning production safety. The case reported shall form written materials. If the measures of making rectification and improvement are needed, they shall be reported to the personnel concerned for a signature and supervised to put into effect.

Article 64 Any unit and individual are entitled to report and tip off the hazards to accidents or illegal acts against production safety to the departments in charge of the supervision and administration of production safety.

Article 65 In case the neighborhood committee and villagers' committee find the hazards to accidents or illegal acts concerning production safety on the part of the production operation units, they shall make reports to the local people's government or the relevant departments.

Article 66 The people's governments at and above the county level and the departments concerned shall give rewards to those who have tipped off the serious hazards to accidents or illegal acts against production safety. The means of rewarding are determined by the departments of the State Council in charge of the supervision and administration along with the financial departments of the State Council.

Article 67 The units involving news, printing, broadcasting, film and TV are obliged to publicize production safety and are entitled to supervise the acts in violation of the production safety laws and regulations through public opinion.

Chapter V The Emergency Rescue, Investigation and Disposal of Accidents

Article 68 The local people's governments at and above the county level shall organize the relevant departments to frame emergency rescue contingent proposals for serious accidents in their administrative districts and establish emergency rescue system.

Article 69 The units engaging in the manufacture, operation and storage of dangerous goods, mines and construction work units shall be fitted up with necessary emergency rescue appliances and equipments, and make regular maintenances and protections to guarantee the normal running.

Article 70 In case of an accident occurring to production operation units, the staff concerned on the spot shall report forthwith it to the personnel in charge.

On receiving the report, the personnel in charge shall adopt effective measures promptly and organize the rescue to prevent the accident from extending and reduce the casualties and losses caused by the accident, according to the relevant provisions of the State make a true report to the departments in charge of the supervision and examination of production safety. They shall not conceal the facts without reporting, give a false report or delay reporting. They shall not sabotage the accident site or ruin the relevant evidences.

Article 71 Upon being informed of the accident, the departments in charge of the supervision and administration of production safety shall report the accident at once, in accordance with the relevant provisions of the State. The departments in charge of the supervision and administration of production safety and the relevant local people's government shall not conceal the facts without reporting, give false report or delay reporting.

Article 72 On being informed of the accident, the local people's governments concerned and the personnel in the departments in charge of the supervision and administration of production safety shall reach the spot without delay and organize the rescue.

Any unit and individual shall assist and support the rescue and offer all the convenient facilities.

Article 73 The accident shall be investigated and handled on the principle of seeking for facts and respecting science. The personnel in charge of the accident investigation and disposal shall track down the accident cause forthwith and precisely, ascertain the nature of and liability for accident, conclude the lessons from the accident, advance the measures for making rectification and improvement and table the proposals for dealing with the personnel blaming for the accident. The specific methods of investigation and disposal of the accident shall be made by the State Council.

Article 74 In case an accident occurring to production operation units is defined as a human element accident, the liability of the units involving the accident shall be tracked down and these units shall be prosecuted according to law. In addition, the liability of the departments in charge of the examination and approval as well as the supervision of production safety shall be found out and those charged with the breach of the duty and dereliction of the duty hereof shall be prosecuted for legal liability according to the provisions specified in Article 77 thereafter in this Law.

Article 75 Any unit and individual shall not interfere with the investigation and disposal of the accident according to law.

Article 76 The departments of the local people's governments at and above the county level in charge of the supervision and administration of production safety shall make regular statistical analyses of the accidents occurring in their own administrative districts and publicize them regularly.

Chapter VI Legal Liability

Article 77 The staff of the relevant departments in charge of the supervision and administration of production safety, if committing one of the following acts, shall be imposed such administrative sanction as degrading or dismissal from their posts according to law; whoever commits a crime shall be prosecuted for criminal liability according to the relevant provisions of the Criminal Law on the crimes of.

(1) Approving, and passing the matters concerning production safety that do not fulfill conditions as required by law;

(2) Failing to outlaw or handle according to law units and individuals in case of discovering their engagement in the relevant activities without being approved or accepted according to law, or upon the receipt of reports;

(3) Failing to fulfill the supervisory and administrative responsibilities for units and individuals that are approved or accepted according to law, failing to revoke the original approval of units and individuals who do not satisfy the production safety conditions any longer, or failing to investigate and handle the acts going against production safety regulations.

Article 78 If the departments in charge of the supervision and administration of production safety require the examined parties to buy the appointed safety facilities, equipments or other products, and charge for the examination and acceptance of matters concerning production safety, they shall be ordered by the higher authorities or supervisory body to make correction and to hand back the charges.; In case of gravity of the circumstances, the personnel chiefly in direct charge and the other staff directly responsible shall be imposed administrative sanction.

Article 79 The institutions undertaking evaluation, recognition, test and examination of safety, if committing crimes by producing false certificates, shall be prosecuted for criminal liability in accordance with the relevant provisions of the Criminal Law; If they commit an act not constituting a crime, their illegal gains shall be confiscated. If the illegal gains are not less than RMB 5,000, the offender shall be imposed a fine ranging from twice the amount of illegal gains to five times. If there is no gain form illegal conduct or the illegal gains are not more than RMB 5,000, the offender shall be imposed respectively or totally a fine of not less than RMB 5,000 but not more than RMB 20,000. The personnel chiefly in direct charge and the other staff directly responsible hereof shall be imposed a fine of not less than RMB 5,000 but RMB 50,000. If harms are done to others, these institutions will bear related and several liabilities for compensation along with production operation units.

If the institutions violate the preceding Paragraph herein, their qualification shall be revoked.

Article 80 If the policy-making organizations of production operation units, the personnel chiefly in charge and the individual investors, in violation of this Law, do not guarantee the capital investment needed for production safety, which leads to the failure of production safety conditions of the production operation units, they shall be ordered to make corrections with time limit and offer required capital; If they fail to make correction with the specified time limit, the production operation units shall be ordered to stop business for rectification.

Whoever commits a crime because of violating the preceding Paragraph and thereof bringing forth an accident shall be prosecuted for criminal liability in accordance with the relevant provisions of the Criminal Law. If their illegal act is not constituting a crime, the

personnel of the production operation units chiefly in charge shall be imposed such administrative sanction as the dismissal from their posts and the individual investors shall be imposed a fine of not less than RMB 20,000 but not more than RMB 200,000.

Article 81 If the personnel of the units of production and operation chiefly in charge fail to fulfill the responsibilities for production safety administration specified in this Law, they shall be ordered to make corrections with time limit; If they fail to make corrections within the specified time limit, the production operation units shall be ordered to stop business for rectification.

If the personnel of the production operation units chiefly in charge commit a crime because of violating the preceding Paragraph herein and bringing forth an accident shall be prosecuted for a criminal liability in accordance with the relevant provisions of the Criminal Law. If their illegal act is not constituting a crime, the personnel of the production operation units chiefly in charge shall be imposed the dismissal from their posts or imposed a fine of not less than RMB 20,000 but not more than RMB 200,000.

In the event that the personnel of the production operation units chiefly in charge according to the preceding Paragraph are prosecuted for criminal liability or imposed the dismissal from the posts, they shall not work as the personnel chiefly in charge within five years from the date he receives prosecution and sanction on.

Article 82 The production operation units, if committing one of the following acts, shall be ordered to make correction with time limit; If failing to make correction within the specified time limit, they shall be ordered to stop business for rectification, and be imposed a fine of less than RMB 20,000 as well.

- (1) Failing to set up administrative organizations for production safety or to provide the personnel in charge of administration of production safety according to the regulations.
- (2) Having the personnel chief in charge of units engaging in the manufacture, operation, and storage of dangerous articles, mines and construction work units and the staff in charge of the administration of production safety pass the examination without according to the regulations.
- (3) Failing to provide the operators with instruction and training in production safety according to the provisions of Article 21 and Article 22 herein or failing to inform in truth the operators of matters concerning production safety according to the provision of Article 36 in this Law.
- (4) Allowing the special operators to hold the posts without receiving appointed training in operation safety and without obtaining the certificate for special operation.

Article 83 The production operation units, if committing one of the following acts, shall be ordered to make correction with time limit; If they fail to make corrections within the specified time limit, they shall be ordered to stop construction or to stop business for rectification and be imposed a fine of less than RMB 50,000 as well; where their illegal act causes serious consequences and constitutes a crime, they shall be prosecuted for criminal liability according to the relevant provisions of the Criminal Law:

- (1) Where mining construction projects or construction projects used for manufacturing and storing dangerous articles are not provided with safety facilities or safety

designing is passed without being reported to the relevant departments for examination and approval required by the regulations.

- (2) Where mining construction projects or construction projects used for manufacturing and storing dangerous goods are carried out without the approved safety facilities.
- (3) Where the safety facilities are approved without examination before mining construction projects or construction projects used for manufacturing and storing dangerous goods are completed and put on stream or put into use.
- (4) Where the prominent danger signals are not set up in the working sites and the relevant facilities and equipments with higher hazard factors.
- (5) Where the installation, use, test, restructure and rejection of the safety equipments do not satisfy national standards or trade standards.
- (6) Where the safety facilities are not maintained, protected or tested regularly.
- (7) Where the labor preventive articles meeting national standards or trade standards are not provided for the employees.
- (8) Where the special equipments and containers and transportation tools used for dangerous goods are put into use only after obtaining approved use and safety notice through the examination and check of the organizations with the absence of professional qualification.
- (9) Where the technics and equipments endangering production safety, eliminated and prohibited by the State's public proclamation, are used in production.

Article 84 Whoever manufactures, deals in and stores the dangerous goods without the approval of law shall be ordered to stop its illegal act or to shut down. Its illegal gains shall be confiscated. If its illegal gains are more than RMB100,000, the offender shall be imposed a fine of not less than twice the amount of the illegal gains but not more than five times hereof. If there is no gain form illegal conduct or the illegal gains are not more than RMB100,000, the offender shall be imposed respectively or totally a fine of not less than RMB 20,000 but not more than RMB 100,000. If its illegal act causes serious consequences and constitutes a crime, it shall be prosecuted for criminal liability according to the relevant provision of the Criminal Law.

Article 85 Production operation units, if committing one of the following acts, shall be ordered to make correction with time limit; If they fail to make correction within the specified time limit, they shall be ordered to stop business for rectification, and be imposed a fine of not less than RMB 20,000 but not more than RMB 100,000; Where their illegal act causes serious consequences and constitutes a crime, they shall be prosecuted for criminal liability according to the relevant provisions of the Criminal Law.

(1) Where units engaging manufacture, operation, storage, and use of dangerous articles do not establish production safety system, not adopt reliable safety measures or refuse to accept the supervision and administration of the relevant departments chiefly in charge.

(2) Where the serious hazard sources are not kept in record, evaluated and supervised, or emergency contingent proposals are not framed.

(3) Where no personnel are appointed to supervise the spot safety in the process of dynamiting and hoisting, etc.

Article 86 Production operation units, if subcontracting or leasing a project the construction projects, working sites, or equipments to those units and individuals not provided with

production safety conditions and the corresponding professional level, shall be ordered to make correction with time limit and have their illegal gains confiscated. If the illegal gains are more than RMB 50,000, the offender shall be imposed a fine ranging from twice the amount of illegal gains to five times hereof. If there is no gain from illegal conduct or the illegal gains are not more than RMB 50,000, the offender shall be imposed respectively or totally a fine of not less than RMB 10,000 but not more than RMB 50,000. If accidents do harms to others, they shall bear joint and several liability of compensation along with the contractor and leaseholder.

If production operation units do not sign a special contract about the supervision of production safety with contractor units and leaseholder units or not specify their own responsibility for the administration of production safety respectively in project contract and lease contract, or not consolidate the coordination and administration with the production safety on the part of contractor units and leaseholder units, they shall be ordered to make correction with time limit; if they fail to make correction within the specified time limit, they shall be ordered to stop business.

Article 87 If more than two production operation units working in the same operating area are likely to endanger the production safety of the other parties, and they do not sign safety contract or appoint the profession staff in charge of the administration of production safety to make examinations and co-ordinations, they shall be ordered to make corrections with time limit; If they fail to make corrections within the specified time limit, they shall be ordered to stop production.

Article 88 Production operation units, if committing one of the following acts, shall be ordered to make corrections with time limit; If they fail to make corrections, they shall be ordered to stop business for rectification; Where their act causes serious consequences and constitutes a crime, they shall be prosecuted for criminal liability according to the relevant provisions of the Criminal Law.

(1) Where the workshops, stores and warehouses used to manufacture, deal in, store, and make use of dangerous substance are placed with the staff quarter in the same building, and are not kept away from the staff quarter in a required distance.

(2) Where the work sites and staff quarter are not provided with exits meeting requirements of emergency evacuation, possessing remarkable signs, and maintaining unblocked or the exits of the working sites and staff quarter are closed down and blocked out.

Article 89 If production operation units sign a contract with the employees to exempting themselves from liability or relieving themselves of liability for accident casualties they shall take on according to law, this contract is of no effect; the personnel chiefly in charge of production operation units and individual investors shall be imposed a fine of not less than RMB 20,000 but not more than RMB 100,000.

Article 90 The employees of production operation units, if disobeying the supervision and violating production safety regulations or operation rules, shall receive criticism and instruction from the production operation units and be imposed sanctions in accordance with the relevant regulations. If their act causes serious consequences and constitutes a crime, they shall be prosecuted for criminal liability according to the relevant provisions of the Criminal Law.

Article 91 In case of a serious accident occurring to production operation units, if the personnel chiefly in charge of these units do not organize rescue forthwith or are absent without leave or escape and hide in the course of the investigation and disposal of the accident, they shall be imposed such administrative sanction as degrading or dismissal from their posts according to law; whoever escapes and hides for fifteen days shall be imposed fifteen-day detention; if their act constitutes a crime, they shall be prosecuted for criminal liability according to the provisions of the Criminal Law.

If the personnel chiefly in charge of production operation units conceal the facts of the accident without reporting, give false reports or delay reporting, they shall be prosecuted in accordance with the preceding Paragraph herein.

Article 92 If the relevant local people's governments and the departments in charge of the supervision and administration of production safety conceal the facts of the accident, give false reports or delay reporting, the personnel chiefly in charge and the other directly responsible staff shall be imposed administrative sanction according to law; If their act constitutes a crime, they shall be prosecuted for criminal liability according to the relevant provisions of the Criminal Law.

Article 93 The production operation units, if not provided with production safety conditions as required by this Law and the other relevant laws and administrative regulations as well as national standards or trade standards, shall be closed down; if they still do not satisfy these safety conditions through rectification, the department concerned shall revoke their relevant license according to law.

Article 94 The administrative sanction, stipulated by this Law, shall be determined by the departments in charge of the supervision and administration of production safety; such administrative sanction as close down shall be reported by the department in charge of the supervision and administration of production safety to the local people's governments at and above the county level and be determined by the governments concerned according to the purview laid down by the State Council; such administrative sanction as detention shall be decided by the public security organs according to the provisions in the Regulations on Management of Law and Order; If the relevant laws and administrative regulations provide the organs that determine the administrative sanctions, these provisions shall be followed.

Article 95 If the accidents resulting in casualties and losses of others' property occur to the production operation units, these units shall bear the responsibility for compensation according to law; If these units refuse to take it or personnel in charge escape and hide, people's court shall enforce it according to law.

The personnel responsible for the accident shall continue their fulfillment of compensation duty if they do not undertake the responsibility of compensation according to law and cannot provide adequate compensations for the victims after the enforcement measures of the people's court; In case the victims find the personnel in charge have other possessions, they may plea with the people's court for enforcement at any time.

Chapter VII Supplementary Rules

Article 96 The terminologies in this Law are defined as follows:

Dangerous goods refer to those endangering people's life and property safety such as explosives, dangerous chemicals, and radioactive materials, etc.

Serious hazard sources refer to the cells (including sites and facilities) where dangerous goods are manufactured, transported, used or stored permanently or temporarily and the amount of the dangerous articles are equal to or more than threshold quantity.

Article 97 This Law shall take effect as of 1st November 2002.