附件 1

# 專利法修正草案「實施」與「使用」之整理

# 壹、實施之定義

| 修正條文 | 現行條文 | 說明 |
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| 第五十九條　發明專利權人，除本法另有規定者外，專有排除他人未經其同意而實施該發明之權。<br>物之發明之實施，指製造、為販賣之要約、販賣、使用或為上述目的而進口該物之行為。<br>方法發明之實施，指下列各款行為：<br>一、使用該方法。<br>二、使用、為販賣之要約、販賣或為上述目的而進口該方法直接製成之物。<br>發明專利權範圍，以申請專利範圍為準，於解釋申請專利範圍時，並得審酌說明書及圖式。 | 第五十六條　物品專利權人，除本法另有規定者外，專有排除他人未經其同意而製造、為販賣之要約、販賣、使用或為上述目的而進口該物品之權。<br>方法專利權人，除本法另有規定者外，專有排除他人未經其同意而使用該方法及使用、為販賣之要約、販賣或為上述目的而進口該方法直接製成物品之權。<br>發明專利權範圍，以說明書所載之申請專利範圍為準，於解釋申請專利範圍時，並得審酌發明說明及圖式。 | 一、條次變更。<br>二、第一項為現行條文第一項及第二項合併修正。按物品專利及方法專利可為發明專利之上位概念所涵蓋，至於「製造、為販賣之要約、販賣、使用或為上述目的而進口」，則屬「實施」之具體行為，爰參考日本特許法第六十八條、韓國專利法第九十四條、澳洲專利法第十三條第一項之立法例，將發明專利權之效力作通則性之規定。<br>三、第二項及第三項新增。參考日本特許法第二條第三項、韓國專利法第二條第三項及澳洲專利法第三條附表一之立法例，明定物之發明及方法發明之實施的定義。所謂「物之發明」，包括物品發明與物質發明，與新型及設計之標的限於「物品」有所區隔。<br>四、現行條文第三項修正移列第四項。配合本次修正將申請專利範圍獨立於說明書之外，爰予修正。理由詳見修正條文第二十三條。 |
| 第一百二十四條　新型專利權人，除本法另有規定者外，專有排除他人未經其同意而實施該新型之權。 | 第一百零六條　新型專利權人，除本法另有規定者外，專有排除他人未經其同意而製造、為販賣之要約 | 一、條次變更。<br>二、第一項修正。按「製造、為販賣之要約、販賣、使用或為上述目的而進口」 |

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| 新型之實施，指製造、為販賣之要約、販賣、使用或為上述目的而進口該新型物品之行為。<br>新型專利權範圍，以申請專利範圍為準，於解釋申請專利範圍時，並得審酌說明書及圖式。 | 、販賣、使用或為上述目的而進口該新型專利物品之權。<br>新型專利權範圍，以說明書所載之申請專利範圍為準，於解釋申請專利範圍時，並得審酌創作說明及圖式。 | 等行為，可為「實施」一詞所涵蓋，爰予修正。<br>三、第二項新增。明定新型之實施的定義，以利適用。<br>四、現行條文第二項修正移列第三項。配合本次修正將申請專利範圍獨立於說明書之外，爰予修正。 |
| 第一百四十五條　設計專利權人，除本法另有規定者外，專有排除他人未經其同意而實施該設計之權。<br>設計之實施，指製造、為販賣之要約、販賣、使用或為上述目的而進口該設計及近似設計物品之行為。<br>設計專利權範圍，以圖式為準，並得審酌說明書。 | 第一百二十三條　新式樣專利權人就其指定新式樣所施予之物品，除本法另有規定者外，專有排除他人未經其同意而製造、為販賣之要約、販賣、使用或為上述目的而進口該新式樣及近似新式樣專利物品之權。<br>新式樣專利權範圍，以圖面為準，並得審酌創作說明。 | 一、條次變更。<br>二、第一項修正。<br>(一)配合本次修正將「新式樣」一詞修正為「設計」，爰予文字修正。<br>(二)按無論依現行規定之新式樣專利或修正後之設計專利，其保護之範圍應為設計而非物品，爰刪除現行規定「就其指定新式樣所施予之物品」，以資明確。<br>(三)按「製造、為販賣之要約、販賣、使用或為上述目的而進口」等行為，可為「實施」一詞所涵蓋，爰予修正。<br>三、第二項新增。明定設計之實施的定義，以利適用。<br>四、第三項配合本次修正，爰予文字修正。另此處所稱之設計說明併包含圖式說明。 |

**※外國立法例**

第一種類型：正面定義「實施」之意義

| 國別 | 條次 | 條文 |
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| 日本 | 第 2 條第 3 項 | 3　この法律で発明について「**実施**」とは、次に掲げる行為をいう。<br>(3) "**Working**" of an invention in this Act means the following acts:<br>一物（プログラム等を含む。以下同じ。）の発明にあつては、その |

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| | | 物の生産、使用、譲渡等（譲渡及び貸渡しをいい、その物がプログラム等である場合には、電気通信回線を通じた提供を含む。以下同じ。）、輸出若しくは輸入又は譲渡等の申出（譲渡等のための展示を含む。以下同じ。）をする行為<br>(i) in the case of an invention of a product (including a computer program, etc., the same shall apply hereinafter), producing, using, assigning, etc. ( assigning and leasing and, in the case where the product is a computer program, etc., including providing through an electric telecommunication line, the same shall apply hereinafter), exporting or importing, or offering for assignment, etc.(including displaying for the purpose of assignment, etc., the same shall apply hereinafter) thereof;<br>二方法の発明にあつては、その方法の使用をする行為<br>(ii) in the case of an invention of a process, the use thereof; and<br>三物を生産する方法の発明にあつては、前号に掲げるもののほか、その方法により生産した物の使用、譲渡等、輸出若しくは輸入又は譲渡等の申出をする行為<br>(iii) in the case of an invention of a process for producing a product, in addition to the action as provided in the preceding item, acts of using, assigning, etc., exporting or importing, or offering for assignment, etc. the product produced by the process. |
| | 第68條 | 特許権者は、業として特許発明の**実施**をする権利を専有する。ただし、その特許権について専用実施権を設定したときは、専用実施権者がその特許発明の実施をする権利を専有する範囲については、この限りでない。<br>A patentee shall have the exclusive right to **work** the patented invention as a business; provided, however, that where an exclusive license regarding the patent right is granted to a licensee, this shall not apply to the extent that the exclusive licensee is licensed to exclusively work the patented invention. |
| 韓國 | 第2條<br>第3項 | Article 2 Definitions<br>The definitions of terms used in this Act are as follows:<br>(iii) "**working**" means any of the following acts:<br>(a) acts of manufacturing, using, assigning, leasing, importing or offering for assignment or lease (including |

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| | | displaying for assignment or lease) an invented product;<br>(b) acts of using an invented process; and<br>(c) acts of using, assigning, leasing, importing or offering for assignment or lease a product manufactured by an invented process for manufacturing a product, in addition to the acts mentioned in subparagraph (b). |
| | 第 94 條 | A patentee has an exclusive right to **work** a patented invention commercially and industrially unless the patent right is the subject of an exclusive license, in which case the exclusive licensee has an exclusive right to work the patented invention under Article 100(2). |
| 澳洲 | 第 3 條<br>暨附表 1 | 3 Definitions<br>The following expressions are defined, for the purposes of this Act or of a particular Chapter of this Act, in the dictionary in Schedule 1:<br>**exploit**, in relation to an invention, includes:<br>(a)where the invention is a product—make, hire, sell or otherwise dispose of the product, offer to make, sell, hire or otherwise dispose of it, use or import it, or keep it for the purpose of doing any of those things; or<br>(b)where the invention is a method or process—use the method or process or do any act mentioned in paragraph (a) in respect of a product resulting from such use. |
| | 第 13 條 | 13 Exclusive rights given by patent<br>(1)Subject to this Act, a patent gives the patentee the exclusive rights, during the term of the patent, to **exploit** the invention and to authorise another person to exploit the invention.<br>(2)The exclusive rights are personal property and are capable of assignment and of devolution by law.<br>(3)A patent has effect throughout the patent area. |
| 大陸 | 第 11 條 | 第十一条 发明和实用新型专利权被授予后，除本法另有规定的以外，任何单位或者个人未经专利权人许可，都不得**实施**其专利，即不得为生产经营目的制造、使用、许诺销售、销售、进口其专利产品，或者使用其专利方法以及使用、许诺销售、销售、进口依照该专利方法直接获得的产品。<br>外观设计专利权被授予后，任何单位或者个人未经专利权人许可，都不得实施其专利，即不得为生产经营目的制造、许诺销售、销售、进口其外观设计专利产品。 |

第二種類型：未正面定義「實施」之意義

| 國別 | 條次 | 條文 |
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| TRIPS | 第 28 條<br>第 1 項 | Article 28<br>Rights Conferred<br>1. A patent shall confer on its owner the following exclusive rights:<br>(a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing6 for these purposes that product;<br>(b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process. |
| 德國 | 第 9 條 | §9.-A patent shall have the effect that the patentee alone shall be authorized to use the patented invention. A person not having the consent of the patentee shall be prohibited<br>1. from making, offering, putting on the market or using a product which is the subject matter of the patent or importing or stocking the product for such purposes;<br>2. from using a process which is the subject matter of the patent or, when he knows or it is obvious from the circumstances that the use of process is prohibited without the consent of the patentee, from offering the process for use within the territory to which this Law applies;<br>3. from offering, putting on the market, using or importing or stocking for such purposes the product obtained directly by a process which is the subject matter of the patent. |
| 美國 | 第 154 條 | (a)IN GENERAL.—<br>(1)CONTENTS.—Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, of the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States, and, if the invention is a process, of the right to exclude others from using, offering for sale or selling throughout the United States, or importing into the United States, products made by |

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| | | that process, referring to the specification for the particulars thereof. |
| **英國** | 第 60 條 | 60.-(1) Subject to the provisions of this section, a person infringes a patent for an invention if, but only if, while the patent is in force, he does any of the following things in the United Kingdom in relation to the invention without the consent of the proprietor of the patent, that is to say -<br>(a) where the invention is a product, he makes, disposes of, offers to dispose of, uses or imports the product or keeps it whether for disposal or otherwise;<br>(b) where the invention is a process, he uses the process or he offers it for use in the United Kingdom when he knows, or it is obvious to a reasonable person in the circumstances, that its use there without the consent of the proprietor would be an infringement of the patent;<br>(c) where the invention is a process, he disposes of, offers to dispose of, uses or imports any product obtained directly by means of that process or keeps any such product whether for disposal or otherwise. |

## 貳、與修正草案第 59 條、第 124 條、第 145 條之「實施」同義，而將「使用」修正為「實施」之條文

一、修正草案第 60 條、第 147 條

| 修正條文 | 現行條文 | 說　　明 |
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| 第六十條 發明專利權之效力，不及於下列各款情事：<br>三、申請前已在國內**實施**，或已完成必須之準備者。但於專利申請人處得知其發明起未滿六個月，並經專利申請人聲明保留其專利權者，不在此限。<br>五、非專利申請權人所得專利權，因專利權人舉發而撤銷時，其被授權人在舉發前以善意在國 | 第五十七條　發明專利權之效力，不及於下列各款情事：<br>二、申請前已在國內使用，或已完成必須之準備者。但在申請前六個月內，於專利申請人處得知其製造方法，並經專利申請人聲明保留其專利權者，不在此限。<br>五、非專利申請權人所得專利權，因專利權人舉發而撤銷時，其被授權人 | (三)現行條文第二款修正並移列為第三款。<br>1、本款為學說上所稱先使用權或先用權之規定，其為專利侵權抗辯事由之一。依修正條文第三十一條規定，本法對於專利申請係採先申請原則，申請並取得專利權之人不一定是先發明之人，亦不一定是先實施發明之人。在專利權人提出專利申請之前，他人有可能已實施 |

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| 內**實施**或已完成必須之準備者。<br>前項第三款、第五款及第七款之**實施**人，限於在其原有事業目的範圍內繼續利用。 | 在舉發前以善意在國內使用或已完成必須之準備者。<br>前項第二款及第五款之使用人，限於在其原有事業內繼續利用；第六款得為販賣之區域，由法院依事實認定之。 | 或準備實施專利權所保護之發明，於此情況下，如在授予專利權後對在先實施之人主張專利權，禁止其繼續實施該發明，顯然不公平，且造成先實施人投資浪費。因此，各國大都有先用權之規定，主張先用權者可排除專利權之效力。<br>2、在專利申請日前已從事專利物之製造或專利方法之使用者，固得繼續製造專利物或使用專利方法，對其製造之產品或使用專利方法所直接製成之物，並有為後續使用、為販賣之要約及販賣之權。在專利申請日前已從先製造人或先方法使用人處獲得專利物品並予以使用、為販賣之要約及販賣之人，亦當有繼續使用、為販賣之要約及販賣其所獲得產品之權。為避免現行條文第二款所稱之「使用」解釋上是否包括上開行為之疑義，爰參考日本特許法第七十九條、韓國專利法第一百零三條、澳洲專利法第一百十九條規定，將之修正為「實施」。<br>3、專利申請人之發明於申請日前雖經公開，惟如符合修正條文第二十二條第三項之規定，仍可受到新穎性優惠期六個月之保障，故專利申請人若已 |

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| | | 聲明保留其專利權者，自應優先保障專利申請人之權益，亦即，從專利申請人處得知其發明之人，對其得知後六個內所為之實施行為，不得主張先用權，爰參考德國專利法第十二條第一項規定，修正主張先用權之時點。<br>4、現行條文第二款適用之對象包括物之發明及方法發明，現行條文但書「於專利申請人處得知其製造方法」之文字，易誤以為僅適用於方法發明，爰予修正文字，以杜爭議。<br>(六)現行條文第五款所定之「使用」係採廣義之概念，即包含製造、為販賣之要約、販賣、使用或為上述目的而進口等行為，爰參考日本特許法第八十條、韓國專利法第一百零四條規定，修正為「實施」，以資明確。<br>三、第二項修正。<br>(一)配合本次修法，修正適用款次。<br>(二)所謂「原有事業」，依本法施行細則第三十八條規定，指在專利申請前之事業規模而言，惟查日本特許法第七十九條關於先用權之限制為「事業目的範圍」，解釋上不包括實施規模之限制，德國專利法第十二條關於先用權之規定亦未對先用者 |

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| | | 之實施規模作出限制；又第五款善意被授權人得繼續實施之範圍，日本特許法第八十條亦為相同之規定；另歐洲專利公約第一百二十二條第五項，對於在專利權回復前善意實施之人，亦規定其得在其事業中或為其事業需要而繼續實施發明，而無事業規模之限制，爰將「原有事業」修正為「原有事業目的範圍」。 |
| 第一百四十七條　設計專利權之效力不及於下列各款情事：<br>三、申請前已在國內**實施**，或已完成必須之準備者。但於專利申請人處得知其設計起未滿六個月，並經專利申請人聲明保留其專利權者，不在此限。。<br>五、非專利申請權人所得專利權，因專利權人舉發而撤銷時，其被授權人在舉發前善意在國內**實施**或已完成必須之準備者。<br>前項第三款、第五款及第七款之**實施**人，限於在其原有事業目的範圍內繼續利用。 | 第一百二十五條　新式樣專利權之效力，不及於下列各款情事：<br>二、申請前已在國內使用，或已完成必須之準備者。但在申請前六個月內，於專利申請人處得知其新式樣，並經專利申請人聲明保留其專利權者，不在此限。<br>五、非專利申請權人所得專利權，因專利權人舉發而撤銷時，其被授權人在舉發前善意在國內使用或已完成必須之準備者。<br>前項第二款及第五款之使用人，限於在其原有事業內繼續利用；第六款得為販賣之區域，由法院依事實認定之。<br>第一項第五款之被授權人，因該專利權經舉發而撤銷之後仍實施時，於收到專利權人書面通知之日起，應支付專利權人合理之權利 | (三)現行條文第二款修正並移列為第三款，並將「使用」修正為「實施」，理由同修正條文第六十條修正理由。<br>(四)現行條文第三款刪除。理由同修正條文第六十條修正理由。<br>(六)現行條文第五款「使用」修正為「實施」，理由同修正條文第六十條修正理由。<br>三、第二項修正。配合本次修法，修正適用款次；其餘修正理由同修正條文第六十條修正理由。<br>四、第三項未修正。 |

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## ※外國立法例

| 國別 | 條次 | 條文 |
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| **日本** | 第 79 條 | 第七十九条（先使用による通常実施権）<br>Article 79(Non-exclusive license based on prior use)<br>特許出願に係る発明の内容を知らないで自らその発明をし、又は特許出願に係る発明の内容を知らないでその発明をした者から知得して、特許出願の際現に日本国内においてその発明の**実施**である事業をしている者又はその事業の準備をしている者は、その実施又は準備をしている発明及び事業の目的の範囲内において、その特許出願に係る特許権について通常実施権を有する。<br>A person who, without knowledge of the content of an invention claimed in a patent application, made an invention identical to the said invention, or a person who, without knowledge of the content of an invention claimed in a patent application, learned the invention from a person who made an invention identical to the said invention and has been **working** the invention or preparing for the **working** of the invention in Japan at the time of the filing of the patent application, shall have a non-exclusive license on the patent right, only to the extent of the invention and the purpose of such business **worked** or prepared. |
| **日本** | 第 80 條 | 第八十条（無効審判の請求登録前の実施による通常実施権）<br>Article 80 Non-exclusive license ( due to the working of the invention prior to the registration of the request for a trial for patent invalidation)<br>１ 次の各号のいずれかに該当する者であつて、特許無効審判の請求の登録前に、特許が第百二十三条第一項各号のいずれかに規定する要件に該当することを知らないで、日本国内において当該発明の**実施**である事業をしているもの又はその事業の準備をしているものは、その実施又は準備をしている発明及び事業の目的の範囲内において、その特許を無効にした場合における特許権又はその際現に存する専用実施権について通常実施権を有する。<br>(1) A person falling under any of the following items, who is doing a business **working** an invention in Japan or preparing such business, before the registration of a request for a trial for patent invalidation, without knowledge that the patent falls under any of the paragraphs of Article 123(1), shall have a |

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| | | non-exclusive license regarding the invalidated patent right or the exclusive license existing at the time of the invalidation, only to the extent of the invention and the purpose of such business worked or prepared:<br>一同一の発明についての二以上の特許のうち、その一を無効にした場合における原特許権者<br>(i) the original patentee in the case where one of two or more patents granted for the same invention has been invalidated;<br>二特許を無効にして同一の発明について正当権利者に特許をした場合における原特許権者<br>(ii) the original patentee in the case where, after a patent has been invalidated, a patent is granted to the person who is entitled to obtain a patent for the same invention; and<br>三前二号に掲げる場合において、特許無効審判の請求の登録の際現にその無効にした特許に係る特許権についての専用実施権又はその特許権若しくは専用実施権についての第九十九条第一項の効力を有する通常実施権を有する者<br>(iii) in the case referred to in items (i) and (ii), a person that, at the time of the registration of the request for a trial for patent invalidation, has an exclusive license regarding the patent right to be invalidated, or a non-exclusive license effective under Article 99(1) regarding the patent right or an exclusive license on the patent right. |
| **韓國** | 第103條 | Article 103 Nonexclusive License by Prior Use<br>When filing a patent application, a person who has made an invention without prior knowledge of the contents of an invention described in an existing patent application, or who has learned how to make the invention from such a person and has been working the invention commercially or industrially in the Republic of Korea in good faith or has been making preparations to work the invention is entitled to have a nonexclusive license on the patent right for the invention under the patent application. The nonexclusive license must be limited to the invention being worked, or for which preparations for working have been made, and to the purpose of such working or preparations. |
| **韓國** | 第104條<br>第1項 | Article 104 Nonexclusive License Due to Working before Registration of a Request for an Invalidation Trial<br>(1) Where a person has been commercially or industrially working an invention in the Republic of Korea, or has been making |

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| | | preparations to work the invention, before the registration of a request for an invalidation trial of the concerned patent or utility model, without knowing that the patented invention is subject to invalidation, the person is entitled, under any of the following circumstances, to have a nonexclusive license on that patent right or a nonexclusive license on the exclusive license to the patent right existing when the patent or utility model registration was invalidated; however, the nonexclusive license must be limited to the invention or device being **worked** or for which preparations for **working** are being made, and to the purpose of such **working** or preparations:<br>(i) the original patentee, where one of two or more patents granted for the same invention has been invalidated;<br>(ii) the original owner of a utility model right, where a patented invention and a device registered as a utility model are the same and the utility model registration has been invalidated;<br>(iii) the original patentee, where the patent has been invalidated and a patent for the same invention has been granted to an entitled person;<br>(iv) the original owner of a utility model right, where the utility model registration has been invalidated and a patent for the same invention as the device has been granted to an entitled person; or<br>(v) in the cases referred to in subparagraphs (i) to (iv), a person who, at the time of registering a request for an invalidation trial of an invalidated patent right or utility model right, has been granted an exclusive license, a nonexclusive license or a nonexclusive license on the exclusive license and the license has been registered; however, a person falling under Article 118(2) is not required to register the license. |
| **澳洲** | 第119條 | 119 Infringement exemptions: prior use<br>(1) A person may, without infringing a patent, do an act that **exploits** a product, method or process and would infringe the patent apart from this subsection, if immediately before the priority date of the relevant claim the person:<br>(a) was **exploiting** the product, method or process in the patent area; or<br>(b) had taken definite steps (contractually or otherwise) |

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| | | to **exploit** the product, method or process in the patent area.<br>Note 1: This section applies in relation to a patent granted as a result of an application filed on or after the commencement of Schedule 6 to the Intellectual Property Laws Amendment Act 2006 (which repealed and substituted this section).<br>Note 2: Section 119 of this Act as in force before the commencement of that Schedule continues to apply in relation to patents granted as a result of earlier applications.<br>(2) Subsection (1) does not apply if, before the priority date, the person:<br>(a) had stopped (except temporarily) exploiting the product, method or process in the patent area; or<br>(b) had abandoned (except temporarily) the steps to exploit the product, method or process in the patent area.<br>Limit for product, method or process derived from patentee<br>(3) Subsection (1) does not apply to a product, method or process the person derived from the patentee or the patentee's predecessor in title in the patented invention unless the person derived the product, method or process from information that was made publicly available:<br>(a) by or with the consent of the patentee or the patentee's predecessor in title; and<br>(b) through any publication or use of the invention in the prescribed circumstances mentioned in paragraph 24(1)(a).<br>Exemption for successors in title<br>(4) A person (the disposer) may dispose of the whole of the disposer's entitlement under subsection (1) to do an act without infringing a patent to another person (the recipient). If the disposer does so, this section applies in relation to the recipient as if the references in subsections (1), (2) and (3) to the person were references to:<br>(a) the disposer; or<br>(b) if the disposer's entitlement arose because of one or more previous applications of this subsection—the first person:<br>(i) who was entitled under subsection (1) (applying of its own force) to do an act without infringing the patent; and<br>(ii)to whom the disposer's entitlement is directly or indirectly attributable.<br>Definition |

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| | | (5) In this section:<br>exploit includes:<br>(a) in relation to a product:<br>(i) make, hire, sell or otherwise dispose of the product; and<br>(ii) offer to make, hire, sell or otherwise dispose of the product; and<br>(iii)use or import the product; and<br>(iv)keep the product for the purpose of doing an act described in subparagraph (i), (ii) or (iii); and<br>(b) in relation to a method or process:<br>(i) use the method or process; and<br>(ii)do an act described in subparagraph (a)(i), (ii), (iii) or (iv) with a product resulting from the use of the method or process. |
| **大陸** | 第 69 條<br>第 2 款 | 第六十九条 有下列情形之一的，不视为侵犯专利权：<br>（二）在专利申请日前已经**制造相同产品、使用相同方法或者已经作好制造、使用的必要准备**，并且仅在原有范围内继续制造、使用的； |
| **德國** | 第 12 條 | (1)A patent shall have no effect against a person who, at the time of the filing of the application, had already begun to use the invention in Germany, or had made the necessary arrangements for so doing. Such person shall be entitled to use the invention for the needs of his own business in his own plant or workshops or the plant or workshops of others. This right can only be inherited or transferred together with the business. If the applicant or his predecessor in title has, before applying for a patent, disclosed the invention to other persons and reserved his rights in the event of a patent being granted, a person learning of the invention as a result of such disclosure cannot, under the provisions under the first sentence, invoke measures which he has taken within six months after the disclosure.<br>(2) If the patentee is entitled to a right of priority, the date of the prior application shall be substituted for the date of the application referred to in subsection(1). However, this provision shall not apply to nationals of a foreign country which does not guarantee reciprocity in this respect, where they claim the priority of a foreign application. |
| **英國** | 第 64 條 | Right to continue use begun before priority date<br>64.-(1) Where a patent is granted for an invention, a person who |

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| | | in the United Kingdom before the priority date of the invention –<br>(a)does in good faith an act which would constitute an infringement of the patent if it were in force, or<br>(b) makes in good faith effective and serious preparations to do such an act,<br>has the right to continue to do the act or, as the case may be, to do the act, notwithstanding the grant of the patent; but this right does not extend to granting a licence to another person to do the act.<br>(2) If the act was done, or the preparations were made, in the course of a business, the person entitled to the right conferred by subsection (1) may –<br>(a) authorise the doing of that act by any partners of his for the time being in that business, and<br>(b) assign that right, or transmit it on death (or in the case of a body corporate on its dissolution), to any person who acquires that part of the business in the course of which the act was done or the preparations were made.<br>(3) Where a product is disposed of to another in exercise of the rights conferred by subsection (1) or (2), that other and any person claiming through him may deal with the product in the same way as if it had been disposed of by the registered proprietor of the patent. |
| **法國** | Article L613-7 | Any person who, within the territory in which this Book applies, at the filing date or priority date of a patent was, in good faith, in **possession** of the invention which is the subject matter of the patent shall enjoy a personal right to **work** that invention despite the existence of the patent.<br>The right afforded by this Article may only be transferred together with the business, the enterprise or the part of the enterprise to which it belongs. |

二、修正草案第 90 條

| 修正條文 | 現行條文 | 說　　明 |
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| 第九十條第二項　有下列情事之一者，而有強制授權之必要者，專利專責機關得依申請強制授權： | 第七十六條第一項、第二項為因應國家緊急情況或增進公益之非營利使用或申請人曾以合理之商業條件 | 第一款明定得為增進公益之非營利實施而申請強制授權。即為現行條文第一項中相關規定之移列。惟現行條文所定 |

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| 一、增進公益之非營利**實施**。 | 在相當期間內仍不能協議授權時，專利專責機關得依申請，特許該申請人實施專利權；其實施應以供應國內市場需要為主。但就半導體技術專利申請特許實施者，以增進公益之非營利使用為限。 | 之「使用」係採廣義之概念，即包含製造、為販賣之要約、販賣、使用或為上述目的而進口等行為，爰參考日本特許法第九十三條、韓國專利法第一百零七條、澳洲專利法第一百六十三條規定，修正為「實施」，以資明確。 |

## ※外國立法例

| 國別 | 條　次 | 條　　文 |
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| **日本** | 第 93 條<br>第 1 項 | 第九十三条（公共の利益のための通常実施権の設定の裁定）<br>Article 93(Award granting non-exclusive license for public interest)<br>1 特許発明の**実施**が公共の利益のため特に必要であるときは、その特許発明の実施をしようとする者は、特許権者又は専用実施権者に対し通常実施権の許諾について協議を求めることができる。<br>(1) Where the working of a patented invention is particularly necessary for the public interest, a person(s) intending to work the patented invention may request the patentee or the exclusive licensee to hold consultations to discuss granting a non-exclusive license. |
| **韓國** | 第 107 條第 1 項<br>第 3 款 | Article 107 Adjudication for the Grant of a Nonexclusive License<br>(1) Where a patented invention falls under any of the following subparagraphs, a person who intends to work the patented invention may request the Commissioner of the Korean Intellectual Property Office to make an adjudication (referred to as "an adjudication") for the establishment of a nonexclusive license, provided no agreement is reached despite having a consultation (referred to as "a consultation" in this Article) under reasonable conditions with the patentee or exclusive licensee on the grant of a nonexclusive license for the patented invention or a consultation is impossible to arrange; however, the person may request an adjudication even in the absence of a consultation if the patented invention is to be **worked** noncommercially for the public interest or in any case that |

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| | | falls under subparagraph (iv):<br>(iii) where **working** the patented invention noncommercially is necessary for the interests of the public; |
| **澳洲** | 第 163 條 | 163 Exploitation of inventions by Crown<br>(1) Where, at any time after a patent application has been made, the invention concerned is **exploited** by the Commonwealth or a State (or by a person authorised in writing by the Commonwealth or a State) for the services of the Commonwealth or the State, the exploitation is not an infringement:<br>(a) if the application is pending—of the nominated person's rights in the invention; or<br>(b) if a patent has been granted for the invention—of the patent.<br>(2) A person may be authorised for the purposes of subsection (1):<br>(a) before or after any act for which the authorisation is given has been done; and<br>(b) before or after a patent has been granted for the invention; and<br>(c) even if the person is directly or indirectly authorised by the nominated person or patentee to exploit the invention.<br>(3) Subject to section 168, an invention is taken for the purposes of this Part to be exploited for services of the Commonwealth or of a State if the exploitation of the invention is necessary for the proper provision of those services within Australia. |

## 參、與修正草案第 59 條、第 124 條、第 145 條之「實施」無關，而配合修正之相關條文

一、修正草案第 26 條、第 134 條

| 修正條文 | 現行條文 | 說明 |
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| 第二十六條第一項　說明書應明確且充分揭露，使該發明所屬技術領域中具有通常知識者，能瞭解其內 | 第二十六條第二項　發明說明應明確且充分揭露，使該發明所屬技術領域中具有通常知識者，能瞭解其 | 參考歐洲專利公約(EPC)第八十三條、專利合作條約(PCT)第五條及實體專利法條約(SPLT)草案第十條規 |

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| 容，並可據以**實現**。 | 內容，並可據以實施。 | 定，說明書之記載應使該發明所屬技術領域中具有通常知識者，能據以「實現」(carry out)，爰將現行條文「實施」之用語修正為「實現」，俾免與修正條文第五十九條第二項及第三項所定之「實施」產生混淆。 |
| 第一百三十四條第二項　說明書及圖式應明確且充分揭露，使該設計所屬技藝領域中具有通常知識者，能瞭解其內容，並可據以**實現**。 | 第一百十七條第二項　圖說應明確且充分揭露，使該新式樣所屬技藝領域中具有通常知識者，能瞭解其內容，並可據以實施。 | 「實施」修正為「實現」，理由同修正條文第二十六條修正說明三。 |

## ※外國立法例

| 國別 | 條次 | 條文 |
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| **日本** | 第 36 條<br>第 4 項<br>第 1 款 | 第三十六条（特許出願）<br>Article 36(Patent applications)<br>４ 前項第三号の発明の詳細な説明の記載は、次の各号に適合するものでなければならない。<br>(4) The statement of the detailed explanation of the invention as provided in item (iii) of the preceding Paragraph shall comply with each of the following items:<br>一経済産業省令で定めるところにより、その発明の属する技術の分野における通常の知識を有する者がその**実施**をすることができる程度に明確かつ十分に記載したものであること。<br>(i) in accordance with Ordinance of the Ministry of Economy, Trade and Industry, the statement shall be clear and sufficient as to enable any person ordinarily skilled in the art to which the invention pertains to **work** the invention; |
| **韓國** | 第 42 條<br>第 3 項 | Article 42 (Patent Application)<br>(3) The detailed explanation of an invention referred to paragraph (2)(iii) must specify the invention clearly and in detail as prescribed by ordinance of the Ministry of Commerce, Industry and Energy so that a person with ordinary skill in the art to which the invention pertains may easily **replicate** the invention. |

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| **澳洲** | 第 40 條第 2 項第 a 款 | 40 Specifications<br>(1) A provisional specification must describe the invention.<br>(2) A complete specification must:<br>(a) describe the invention fully, including the best method known to the applicant of **performing** the invention; and<br>(b) where it relates to an application for a standard patent—end with a claim or claims defining the invention; and<br>(c) where it relates to an application for an innovation patent—end with at least one and no more than 5 claims defining the invention.<br>(3) The claim or claims must be clear and succinct and fairly based on the matter described in the specification.<br>(4) The claim or claims must relate to one invention only. |
| **大陸** | 第 26 條第 3 項 | 说明书应当对发明或者实用新型作出清楚、完整的说明，以所属技术领域的技术人员能够**实现**为准；必要的时候，应当有附图。摘要应当简要说明发明或者实用新型的技术要点。 |
| **美國** | 第 112 條第 1 項 | 35 U.S.C. 112 Specification.<br>The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of **carrying out** his invention. |
| **英國** | 第 14 條第 3 項 | Making of application<br>14-(3) The specification of an application shall disclose the invention in a manner which is clear enough and complete enough for the invention to be **performed** by a person skilled in the art. |
| **EPC** | 第 83 條 | Article 83 Disclosure of the invention<br>The European patent application shall disclose the invention in a manner sufficiently clear and complete for it to be **carried out** by a person skilled in the art. |
| **PCT** | 第 5 條 | Article 5 The Description<br>The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be **carried out** by a person skilled in the art. |
| **SPLT 草案** | 第 10 條 | Article 10<br>Enabling Disclosure |

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| | | (1) [General Principle] The application shall disclose the claimed invention in a manner sufficiently clear and complete for that invention to be **carried out** by a person skilled in the art. The disclosure of the claimed invention shall be considered sufficiently clear and complete if it provides information which is sufficient to allow that invention to be made and used by a person skilled in the art on the filing date, without undue experimentation [as prescribed in the Regulations]. |

二、修正草案第 43 條、第 79 條、第 140 條

| 修正條文 | 現行條文 | 說　　明 |
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| 第四十三條第二項　前項第二款之實驗、補送模型或樣品，專利專責機關必要時，得至現場或指定地點勘驗。 | 第四十八條第二項　前項第二款之實驗、補送模型或樣品，專利專責機關必要時，得至現場或指定地點**實施**勘驗。 | 第二項文字酌作修正。 |
| 第七十九條第二項　前項第二款之實驗、補送模型或樣品，專利專責機關必要時，得至現場或指定地點勘驗。 | 第七十一條第二項　前項第二款之實驗、補送模型或樣品，專利專責機關必要時，得至現場或指定地點**實施**勘驗。 | 第二項酌作文字修正。 |
| 第一百四十條第二項　補送模型或樣品，專利專責機關必要時得至現場或指定地點勘驗。 | 第一百二十二條第二項　前項第二款之補送模型或樣品，專利專責機關必要時得至現場或指定地點**實施**勘驗。 | 第二項酌作文字修正。 |

## 肆、與修正草案第 59 條、第 124 條、第 145 條之「實施」同義之相關條文

| 條　次 | 條　文 |
|---|---|
| 第 6 條<br>第 3 項 | 以專利權為標的設定質權者，除契約另有約定外，質權人不得**實施**該專利權。 |
| 第 7 條<br>第 3 項 | 一方出資聘請他人從事研究開發者，其專利申請權及專利權之歸屬依雙方契約約定；契約未約定者，屬於發明人或創作人。但出資人得**實施**其發明、新型或設計。 |
| 第 8 條<br>第 1 項 | 受雇人於非職務上所完成之發明、新型或設計，其專利申請權及專利權屬於受雇人。但其發明、新型或設計係利用雇用人資源或經驗者，雇用人得於支付合理報酬後，於該事業**實施**其發明、新型或設計。 |

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| 第 40 條<br>第 1 項 | 發明專利申請案公開後，如有非專利申請人為商業上之**實施**者，專利專責機關得依申請優先審查之。 |
| 第 41 條<br>第 1、2 項 | 發明專利申請人對於申請案公開後，曾經以書面通知發明專利申請內容，而於通知後公告前就該發明仍繼續為商業上**實施**之人，得於發明專利申請案公告後，請求適當之補償金。<br>對於明知發明專利申請案已經公開，於公告前就該發明仍繼續為商業上**實施**之人，亦得為前項之請求。 |
| 第 54 條<br>第 1 項 | 醫藥品、農藥品或其製造方法發明專利權之**實施**，依其他法律規定，應取得許可證，其於專利案公告後取得者，專利權人得以第一次許可證申請延長專利至多五年，並以一次為限，且該第一次許可證僅得據以申請延長專利權期間一次。 |
| 第 58 條 | 任何人對於經核准延長發明專利權期間，認有下列情事之一，得附具證據，向專利專責機關舉發之：<br>一、發明專利之**實施**無取得許可證之必要者。<br>二、專利權人或被授權人並未取得許可證。<br>三、申請延長之許可證非屬第一次許可證或該許可證已曾辦理延長者。<br>四、核准延長之期間超過無法**實施**之期間。<br>五~七(略) |
| 第 60 條 | 發明專利權之效力，不及於下列各款情事：<br>一、非出於商業目的之未公開行為。<br>二、以研究或實驗為目的**實施**發明之必要行為。<br>三、申請前已在國內**實施**，或已完成必須之準備者。但於專利申請人處得知其發明起未滿六個月，並經專利申請人聲明保留其專利權者，不在此限。<br>四、僅由國境經過之交通工具或其裝置。<br>五、非專利申請權人所得專利權，因專利權人舉發而撤銷時，其被授權人在舉發前以善意在國內**實施**或已完成必須之準備者。<br>六、專利權人所製造或經其同意製造之專利物品販賣後，使用或再販賣該物品者。上述製造、販賣不以國內為限。<br>七、在專利權依第七十四條第一項第三款規定消滅後，至專利權人依法回復專利權效力並經公告前，以善意**實施**或已完成必須之準備者。<br>前項第三款、第五款及第七款之**實施**人，限於在其原有事業目的內繼續利用。<br>第一項第五款之被授權人，因該專利權經舉發而撤銷之後，仍**實施**時，於收到專利權人書面通知之日起，應支付專利權人合理之權利金。 |
| 第 65 條 | 發明專利權人以其發明專利權讓與、信託、授權他人**實施**或設定質權，非經向專利專責機關登記，不得對抗第三人。<br>前項授權，得為專屬授權或非專屬授權。<br>專屬被授權人在被授權範圍內，排除發明專利權人及第三人**實施**該發明。但約定發明專利權人得**實施**者，從其約定。 |

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| 第 66 條<br>第 1、2 項 | 專屬被授權人得將其被授予之權利再授權第三人**實施**。但契約另有約定者，從其約定。<br>非專屬被授權人非經發明專利權人同意，不得將其被授予之權利再授權第三人**實施**。 |
| 第 68 條 | 發明專利權為共有時，除共有人自己**實施**外，非得共有人全體之同意，不得授權他人**實施**。但契約另有約定者，從其約定。 |
| 第 90 條<br>第 2 項 | 有下列情事之一者，而有強制授權之必要者，專利專責機關得依申請強制授權：<br>一、增進公益之非營利**實施**。<br>二、發明或新型專利之**實施**將不可避免侵害在前之發明或新型專利，且較該在前之發明或新型專利具相當經濟意義之重要技術內容改良。<br>三、品種權人利用品種權必須**實施**他人之生物技術專利，且較該專利具相當經濟意義之重要技術內容改良。<br>四、專利權人有限制競爭或不公平競爭之情事，經法院判決或行政院公平交易委員會處分。 |
| 第 91 條 | 專利專責機關於接到前條第二項之申請後，應通知專利權人於指定期間答辯；屆期不答辯者，得逕行處理。<br>強制授權**實施**應以供應國內市場需要為主。但依前條第二項第四款規定強制授權者，不在此限。<br>強制授權之審定應以書面為之，並載明其授權之理由、範圍、期間及應支付之補償金。<br>強制授權不妨礙原專利權人**實施**其專利權。<br>強制授權不得讓與、信託、繼承、授權或設定質權，但有下列情事之一者，不在此限：<br>一、依前條第二項第一款或第四款規定強制授權，與**實施**該專利有關之營業一併讓與、信託、繼承、授權或設定質權。<br>二、依前條第二項第二款、第三款或第五項規定強制授權者，與被授權人之專利權或品種權一併讓與、信託、繼承、授權或設定質權。 |
| 第 92 條<br>第 2 項 | 有下列各款情事之一者，專利專責機關得依申請廢止其強制授權：<br>一、作成強制授權之事實變更致無強制授權之必要。<br>二、被授權人未依授權之內容適當**實施**。<br>三、被授權人未依專利專責機關之核定支付補償金。 |
| 第 93 條 | 為協助無製藥能力或製藥能力不足之國家，取得治療愛滋病、肺結核、瘧疾及其他傳染病所需醫藥品，專利專責機關得依申請，強制授權申請人**實施**專利權，以供應該國家進口所需醫藥品。 |
| 第 102 條 | 第一百零二條　依前二條請求損害賠償時，得就下列各款擇一計算其損害：<br>一、依民法第二百十六條之規定。但不能提供證據方法以證明其損害時，發明專利權人得就其**實施**專利權通常所可獲得之利益，減除受害後**實施**同 |

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| | 一專利權所得之利益，以其差額為所受損害。<br>二、依侵害人因侵害行為所得之利益。於侵害人不能就其成本或必要費用舉證時，以銷售該項物品全部收入為所得利益。<br>三、以相當於**實施**該發明專利所得收取之權利金數額為其損害。 |
| 第 147 條 | 設計專利權之效力不及於下列各款情事：<br>一、非出於商業目的之未公開行為。<br>二、以研究或實驗為目的**實施**設計之必要行為。<br>三、申請前已在國內**實施**，或已完成必須之準備者。但在申請前六個月內，於專利申請人處得知其設計，並經專利申請人聲明保留其專利權者，不在此限。<br>四、僅由國境經過之交通工具或其裝置。<br>五、非專利申請權人所得專利權，因專利權人舉發而撤銷時，其被授權人在舉發前善意在國內**實施**或已完成必須之準備者。<br>六、專利權人所製造或經其同意製造之專利物品販賣後，使用或再販賣該物品者。上述製造、販賣不以國內為限。<br>七、在專利權依第一百五十二條準用第七十四條第一項第三款規定消滅後，至專利權人依法回復專利權效力並經公告前，以善意**實施**或已完成必須之準備者。<br>前項第三款、第五款及第七款之**實施**人，限於在其原有事業目的範圍內繼續利用。<br>第一項第五款之被授權人，因該專利權經舉發而撤銷之後仍**實施**時，於收到專利權人書面通知之日起，應支付專利權人合理之權利金。 |

## 伍、與修正草案第 59 條、第 124 條、第 145 條之「實施」無關之條文

| 條　次 | 條　文 |
|---|---|
| 第 19 條 | 有關專利之申請及其他程序，得以電子方式為之；其**實施**日期及辦法，由主管機關定之。 |

## 陸、修正草案維持「使用」之條文

一、專利法第 22 條、第 109 條、第 129 條

| 條　次 | 條　文 |
|---|---|
| 第 22 條第 1 項 | 第二十二條　可供產業上利用之發明，無下列情事之一，得依本法申請取得發明專利：<br>一、申請前已見於刊物者。<br>二、申請前已公開**使用**者。 |

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| | 三、申請前已為公眾所知悉者。 |
| 第 109 條<br>第 1 項 | 可供產業上利用之新型，無下列情事之一，得依本法申請取得新型專利：<br>一、申請前已見於刊物者。<br>二、申請前已公開**使用**者。<br>三、申請前已為公眾所知悉者。 |
| 第 129 條<br>第 1 項 | 可供產業上利用之設計，無下列情事之一，得依本法申請取得設計專利：<br>一、申請前有相同或近似之設計，已見於刊物者。<br>二、申請前有相同或近似之設計，已公開**使用**者。<br>三、申請前已為公眾所知悉者。 |

## ※外國立法例

| 國別 | 條次 | 條　　文 |
|---|---|---|
| **日本** | 第 29 條<br>第 1 項 | 第二十九条（特許の要件）<br>Article 29(Conditions for Patentability)<br>１ 産業上利用することができる発明をした者は、次に掲げる発明を除き、その発明について特許を受けることができる。<br>(1) An inventor of an invention that is industrially applicable may be entitled to obtain a patent for the said invention, except for the following:<br>二特許出願前に日本国内又は外国において公然**実施**をされた発明<br>(ii) inventions that were publicly worked in Japan or a foreign country, prior to the filing of the patent application; |
| **韓國** | 第 29 條<br>第 1 項 | Article 29 Requirements for Patent Registration<br>(1) Inventions that have industrial applicability are patentable unless they fall under either of the following subparagraphs:<br>(i) inventions publicly known or **worked** in the Republic of Korea before the filing of the patent application; |
| **大陸** | 第 22 條 | 第二十二条 授予专利权的发明和实用新型，应当具备新颖性、创造性和实用性。<br>新颖性，是指该发明或者实用新型不属于现有技术；也没有任何单位或者个人就同样的发明或者实用新型在申请日以前向国务院专利行政部门提出过申请，并记载在申请日以后公布的专利申请文件或者公告的专利文件中。<br>创造性，是指与现有技术相比，该发明具有突出的实质性特点和显著的进步，该实用新型具有实质性特点和进步。<br>实用性，是指该发明或者实用新型能够制造或者使用，并且能够产生积极效果。<br>本法所称现有技术，是指申请日以前在国内外为公众所知的技术。 |

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| **澳洲** | 第 7 條<br>第 1 項 | 7 Novelty and inventive step<br>Novelty<br>(1)For the purposes of this Act, an invention is to be taken to be novel when compared with the prior art base unless it is not novel in the light of any one of the following kinds of information, each of which must be considered separately:<br>(a)prior art information (other than that mentioned in paragraph (c)) made publicly available in a single document or through doing a single act;<br>(b)prior art information (other than that mentioned in paragraph (c)) made publicly available in 2 or more related documents, or through doing 2 or more related acts, if the relationship between the documents or acts is such that a person skilled in the relevant art would treat them as a single source of that information;<br>(c)prior art information contained in a single specification of the kind mentioned in subparagraph (b)(ii) of the definition of prior art base in Schedule 1. |
| **美國** | 第102條<br>a 款 | 35 U.S.C. 102 Conditions for patentability; novelty and loss of right to patent.<br>A person shall be entitled to a patent unless —<br>(a)the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or<br>(b)the invention was patented or described |
| **EPC** | 第 54 條<br>第 2 項 | Article 54 Novelty<br>(1) An invention shall be considered to be new if it does not form part of the state of the art.<br>(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application. |
| **德國** | 第 34 條<br>第 1 項 | An invention shall be considered to be new if it does not form part of the state of the art. The state of the art comprised all knowledge made available to the public by means of a written or oral description, by use or in any other way, before the date relevant for the priority of the application. |

二、專利法第 59 條、第 124 條、第 145 條

| 條　次 | 條　文 |
|---|---|
| 第 59 條第 2、3 項 | 物之發明之實施，指製造、為販賣之要約、販賣、**使用**或為上述目的而進口該物之行為。<br>方法發明之實施，指下列各款行為：<br>一、**使用**該方法。<br>二、**使用**、為販賣之要 約、販賣或為上述目的而進口該方法直接製成之物。 |
| 第 124 條第 2 項 | 新型之實施，指製造、為販賣之要約、販賣、**使用**或為上述目的而進口該新型物品之行為。 |
| 第 145 條第 2 項 | 設計之實施，指製造、為販賣之要約、販賣、**使用**或為上述目的而進口該設計及近似設計物品之行為。 |

三、專利法第 60、62、67、136、147 條

| 條　次 | 條　文 |
|---|---|
| 第 60 條 | 發明專利權之效力，不及於下列各款情事：<br>六、專利權人所製造或經其同意製造之專利物品販賣後，**使用**或再販賣該物品者。上述製造、販賣不以國內為限。 |
| 第 62 條 | 發明專利權人所製造或經其同意製造之生物材料販賣後，其發明專利權效力不及於該生物材料經繁殖而直接獲得之生物材料。但不得為繁殖之目的，再**使用**該直接獲得之生物材料。<br>前項販賣後之生物材料，以其**使用**必然導致生物材料之繁殖者為限。 |
| 第 67 條 | 發明專利權之讓與或授權，契約約定有下列情事之一致生不公平競爭者，其約定無效：<br>一、禁止或限制受讓人**使用**某項物品或非出讓人、授權人所供給之方法者 。<br>二、要求受讓人向出讓人購取未受專利保障之出品或原料者。 |
| 第 136 條第 2 項 | 二個以上之物品，屬於同一類別，且習慣上以整組物品販賣或**使用**者，得以一設計提出申請。 |
| 第 147 條 | 設計專利權之效力不及於下列各款情事：<br>六、專利權人所製造或經其同意製造之專利物品販賣後，**使用**或再販賣該物品者。上述製造、販賣不以國內為限。 |