

# 海南自由贸易港知识产权保护条例

**Regulations of Hainan Free Trade Port on  
Intellectual Property Rights Protection**

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# 海南自由贸易港知识产权保护条例

(2021年12月1日海南省第六届人民代表大会常务委员会第三十一次会议通过)

## 第一章 总 则

**第一条** 为了加强知识产权保护，激发创新活力，优化营商环境，打造国际一流的知识产权保护高地，根据《中华人民共和国海南自由贸易港法》的规定，遵循有关法律、行政法规的基本原则，结合海南自由贸易港实际，制定本条例。

**第二条** 本条例所称知识产权，是指权利人依法就下列客体享有的专有的权利：

- (一) 作品；
- (二) 发明、实用新型、外观设计；
- (三) 商标；
- (四) 地理标志；
- (五) 商业秘密；
- (六) 集成电路布图设计；
- (七) 植物新品种；
- (八) 法律规定的其他客体。

**第三条** 海南自由贸易港开展知识产权保护工作应当遵循全面保护、严格保护、平等保护、依法保护、快速保护、协同保护的原则，对标国际先进标准，创新体制机制，建立制度完备、运转高效的知识产权保护体系。

# Regulations of Hainan Free Trade Port on Intellectual Property Rights Protection

(Adopted at the 31st Session of the Standing Committee of the 6th Hainan Provincial People's Congress on December 1, 2021)

## Chapter I General Provisions

**Article 1** These Regulations are enacted under the Hainan Free Trade Port Law of the People's Republic of China, the basic principles of other laws and regulations, and based on actual circumstances in the Hainan Free Trade Port to improve intellectual property rights protection, encourage innovation, optimize the business environment, and develop a world-class intellectual property rights protection area.

**Article 2** Intellectual property rights in these Regulations refer to the proprietary rights of the right holders of the following under law:

- (a) works;
- (b) inventions, utility models, and designs;
- (c) trademarks;
- (d) geographical indications;
- (e) trade secrets;
- (f) integrated circuit layout designs;
- (g) new plant varieties; and
- (h) other items provided by laws.

**Article 3** The Hainan Free Trade Port shall follow the principles of comprehensive, strict, equal, lawful, rapid, and coordinated protection, adopt international advanced standards as benchmarks, innovate the institutions and mechanisms, and create a complete and efficient intellectual property rights protection system.

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**第四条** 县级以上人民政府应当加强知识产权保护工作的组织领导，将知识产权保护工作纳入国民经济和社会发展规划，建立健全知识产权保护考核评价制度。

县级以上人民政府应当建立健全知识产权工作协调机制，研究制定知识产权重大政策，协调解决知识产权工作中的重大问题。

**第五条** 县级以上人民政府知识产权主管部门（以下简称知识产权主管部门）负责组织实施与统筹协调本区域知识产权保护工作。

作品、发明、实用新型、外观设计、商标、地理标志、商业秘密、集成电路布图设计、植物新品种等知识产权具体管理部门（以下简称知识产权具体管理部门），依法履行各自职责范围内的知识产权保护工作。

发展和改革、工业和信息化、商务、科学技术、财政、公安、司法行政、金融管理、海关等部门，按照各自职责配合做好知识产权保护相关工作。

**第六条** 县级以上人民政府及有关部门应当加强知识产权法律、法规和知识产权知识宣传教育普及工作，促进全社会尊重和保护知识产权意识的提升。

鼓励新闻媒体和社会公众开展知识产权保护公益宣传，对知识产权违法行为进行舆论监督。

**第七条** 县级以上人民政府应当综合运用财政、税收、金融、产业、科技、文化、贸易、人才等政策，激励知识产权创造，完善企业为主体、市场为导向的高质量创造机制。

**Article 4** The people’s governments at or above the county level shall improve intellectual property rights protection organization and administration, integrate intellectual property rights protection into the national economic and social development plan, and create and optimize an intellectual property rights protection review system.

The people’s governments at or above the county level shall create and optimize a coordination system for intellectual property rights work, study and issue major intellectual property rights policies, and coordinate and solve major intellectual property rights issues.

**Article 5** The intellectual property rights agency of the people’s government at or above the county level (hereinafter referred to as “intellectual property rights agency”) shall be responsible for organizing the implementation and comprehensive coordination of intellectual property rights protection in their administrative areas.

Intellectual property rights agency responsible for works, inventions, utility models, designs, trademarks, geographical indications, trade secrets, integrated circuit layout design, or new plant varieties (hereinafter referred to as “intellectual property rights agencies”) shall conduct intellectual property rights protection within the scope of their authorities and duties as required by law.

The development and reform, industry and information technology, commerce, technology, finance, public security, judicial administration, financial management, customs, and other competent agencies shall cooperate in intellectual property rights protection work based on their specific authorities and duties.

**Article 6** The people’s governments at or above the county level and their agencies shall improve awareness and education for intellectual property rights laws, regulations, and knowledge, and improve the society’s overall awareness of intellectual property rights respect and protection.

News media and the public are encouraged to raise intellectual property rights protection awareness, and facilitate public opinion oversight over intellectual property rights violations.

**Article 7** The people’s governments at or above the county level shall comprehensively use public funding, taxation, finance, industry, technology, culture, trade, and skilled employee policies to encourage intellectual property rights creation and improve the effective innovation system with businesses as the main entities and the market as the guide.

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**第八条** 支持海南自由贸易港三亚崖州湾科技城建立与国际通行规则相衔接的知识产权制度体系，促进南繁育种和深海科技等领域国际合作，建设具有海南特色、国际认同度较高、知识产权营商环境一流的海南自由贸易港知识产权保护与运用先行区。

## 第二章 行政保护

**第九条** 知识产权具体管理部门应当利用互联网、大数据、区块链、云计算和人工智能等现代信息技术，建立知识产权纠纷网上处理机制，运用源头追溯、实时监测、在线识别、网络存证、统计分析、跟踪预警等技术手段，严厉打击知识产权侵权行为。

**第十条** 鼓励自然人、法人和非法人组织进行作品自愿登记。

版权部门应当加强互联网著作权保护，依法查处网络侵权盗版行为。

**第十一条** 省知识产权主管部门应当按照国家有关规定，为新一代信息技术、石油化工新材料、现代生物医药、南繁育种、深海科技、航天科技等重点发展产业和战略性新兴产业提供专利优先审查通道。

省知识产权主管部门推动在优势产业集聚区建立知识产权保护中心，开展快速审查、快速确权、快速维权服务，降低知识产权权利人及相关权利人的维权成本。

**第十二条** 知识产权主管部门应当强化知识产权质量导向，引导自然人、法人和非法人组织依法进行商标注册申请、专利申请，依法查处不以使用为目的的恶意申请商标注册和以保护创新为目的的非正常专利申请行为。

**Article 8** The Hainan Free Trade Port Sanya Yazhou Bay Science and Technology City shall receive support to implement an intellectual property system in line with international rules, encourage international collaboration in plant breeding and deep-sea technology, and develop an internationally recognized intellectual property rights protection and implementation pilot zone in the Hainan Free Trade Port tailored to the Hainan area and a first-class intellectual property business environment.

## Chapter II Administrative Protection

**Article 9** The designated intellectual property rights agencies shall utilize modern information technology such as the internet, big data, blockchain, cloud computing, and artificial intelligence to create an online intellectual property rights dispute resolution processing platform, and utilize technical means such as source tracking, real-time monitoring, online identification, online registration, statistical analysis, tracking, and early warning to severely crack down on intellectual property rights infringement.

**Article 10** Individuals, juristic persons, and unincorporated entities are encouraged to voluntarily register their works.

Copyright administrative offices shall improve online copyright protection and investigate and penalize online infringement and piracy pursuant to law.

**Article 11** The provincial intellectual property rights agencies shall provide priority channels of patent review for new-generation key development industries and strategic emerging industries, such as information technology, new petrochemical materials, modern biomedicine, Nanfan plant breeding, deep-sea technology, and aerospace technology.

The provincial intellectual property rights agencies shall encourage the creation of intellectual property rights protection centers in beneficial industrial parks, conduct quick reviews, confirmation, and protection, and reduce protection costs for intellectual property rights and other rights holders.

**Article 12** The intellectual property rights agencies shall improve intellectual property rights quality orientation and guide individuals, juristic persons, and unincorporated entities to register trademarks and patents pursuant to law, and investigate and penalize deceptive trademark applications not for real use and unusual patent applications submitted for purposes other than innovation protection.

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知识产权代理机构知道或者应当知道委托人存在前款规定的恶意申请商标注册和非正常专利申请行为的，不得接受其委托。

**第十三条** 在查处侵犯商业秘密行政案件中，商业秘密权利人提供初步证据，证明其已经对所主张的商业秘密采取保密措施，且合理表明商业秘密被侵犯的，知识产权具体管理部门可以要求涉嫌侵权人证明权利人所主张的商业秘密不属于商业秘密或者其不存在侵犯商业秘密的行为。

**第十四条** 知识产权具体管理部门应当扩大植物新品种权保护范围和保护环节，加大对实质性派生品种的保护，激励育种创新，提升植物新品种保护水平。

**第十五条** 知识产权具体管理部门应当会同有关部门为中医药、老字号、非物质文化遗产、传统知识、民间文艺和少数民族文化等知识产权的创造和保护提供指导、咨询等服务，引导知识产权相关权利人利用著作权登记、专利申请、商标注册、商业秘密保护等方式和保护规则，维护知识产权权利人合法权益。

**第十六条** 知识产权具体管理部门应当会同有关部门建立健全新技术、新产业、新业态、新模式知识产权保护规则，提供必要的培训与指导，加强创新成果的知识产权保护。

**第十七条** 海南自由贸易港依法保护数据收集、存储、加工、使用等活动中形成的知识产权。知识产权具体管理部门建立健全与数据相关的知识产权交易规范，指导市场主体做好数字产品的制造、销售等全产业链知识产权合规经营和侵权风险防范。



Intellectual property rights agencies who know or should have known that their clients have applied for the registration of a deceptive trademark or filed an unusual patent application as provided above shall refuse to work with such clients.

**Article 13** If the trade secret holder provides that basic documentation confidentiality measures have been taken to protect trade secrets concerned involved in administrative trade secret infringement investigations and provides reasonable suspicion that the trade secret has been infringed, the competent intellectual property rights agency may require the alleged infringing party to prove that the trade secret concerned is not legally defined as a trade secret or no trade secret infringement has been committed.

**Article 14** Intellectual property rights agencies shall expand the coverage and protection processes for new plant variety rights, promote the protection of essentially derived varieties, encourage breeding innovation, and improve the protection of new plant varieties.

**Article 15** The designated intellectual property rights agency and other agencies shall provide guidance, advice, and other services for the creation and protection of intellectual property rights related to traditional Chinese medicine, time-honored brands, intangible cultural heritage, traditional knowledge, folk literature and art, and minority cultures, and guide intellectual property rights holders to protect their legal rights through copyright registration, patent applications, trademark registration, trade secret protection, and other applicable methods.

**Article 16** The designated intellectual property rights agencies shall create and optimize intellectual property rights protection rules for new technologies, new industries, new business methods, and models, provide the necessary training and guidance, and improve intellectual property rights protection for the innovation-based achievements.

**Article 17** The Hainan Free Trade Port shall protect intellectual property rights created through data collection, storage, processing and use pursuant to law. The designated intellectual property rights agencies shall create and optimize standards for intellectual property rights transactions related to data, and guide market entities to conduct effective intellectual property rights compliance and infringement risk prevention throughout the entire industrial chain, such as in the manufacturing and sales of digital products.

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**第十八条** 知识产权具体管理部门、商务部门应当会同贸易促进机构和相关行业组织等，建立健全知识产权涉外风险防控体系和跨境维权援助机制，加大对市场主体境外知识产权维权援助的指导，为市场主体开展贸易、投资等活动及时提供预警和应对服务。

**第十九条** 省知识产权主管部门应当会同有关部门建立技术调查官制度，配备技术调查官，为专利、植物新品种、集成电路布图设计、技术秘密、计算机软件等行政裁决、行政执法、调解、仲裁、诉讼和维权援助提供专业技术支持。技术调查官受指派或委托参与知识产权案件办理活动，就案件所涉技术问题提出的技术调查意见，作为认定技术事实的参考。

**第二十条** 海关依照法律、行政法规的规定，加强边境执法与境内执法衔接，在境外与海南自由贸易港进出境环节、全岛封关运作后由海南自由贸易港进入内地环节及其他海关负责监管区域，对与货物有关的专利权、商标专用权、著作权和与著作权有关的权利等知识产权实施保护。

### **第三章 司法保护**

**第二十一条** 知识产权具体管理部门与公安机关、人民检察院、人民法院应当加强知识产权行政执法与刑事司法衔接，建立健全行政机关和司法机关信息共享、案件移送、协调配合、监督制约、责任追究等工作机制，保证涉嫌知识产权犯罪案件依法及时进入司法程序。

人民法院、人民检察院、公安机关应当依法履行知识产权保护职责，加大知识产权犯罪行为打击力度，重点打击链条式、产业化知识产权犯罪。

**Article 18** The designated intellectual property rights agencies and agencies of commerce, together with trade promotion societies and appropriate industry organizations, shall create and optimize a prevention and control system for international intellectual property rights risks and a cross-border rights protection assistance system, improve guidance for market entities to protect their intellectual property rights abroad, and provide prompt warning and response services for market entities to conduct trade and investment activities.

**Article 19** Provincial intellectual property rights agencies and other agencies shall set up a system of technical investigation officers and assign them to provide professional technical support for administrative adjudication, administrative law enforcement, mediation, arbitration, litigation, and rights protection assistance in areas such as patents, new plant varieties, integrated circuit layout design, technical secrets, and computer software. Technical investigation officers shall be assigned or authorized to participate in intellectual property rights case trials and submit opinions on the technical issues concerned to serve as references when identifying technical facts.

**Article 20** Customs shall improve collaboration between border law enforcement and domestic law enforcement, and protect intellectual property rights, including patent rights for goods, exclusive use of trademarks, copyrights, and other rights related to copyrights, when international goods entering and exiting the Hainan Free Trade Port, goods entering China's mainland via Hainan Free Trade Port after the whole island becomes a free trade port, and in other areas under customs oversight pursuant to laws and administrative regulations.

### **Chapter III Judicial Protection**

**Article 21** Intellectual property rights agencies, public security agencies, people's procuratorates, and people's courts shall improve the connection between intellectual property rights administrative law enforcement and criminal procedures, create and optimize working systems for information sharing, case transfer, coordination, oversight and restriction, and accountability between administrative agencies and judicial agencies, and ensure that judicial procedures for cases involving intellectual property rights offenses begin promptly pursuant to law.

The people's courts, people's procuratorates, and public security agencies shall perform their authorities and duties to protect intellectual property rights pursuant to law, intensify the crackdown on intellectual property rights crimes, and focus on cracking down on organized and industrial intellectual property rights crimes.

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人民法院、人民检察院、公安机关应当依照有关规定统一知识产权刑事案件立案、追诉和裁判标准，并向社会公开。

人民法院、人民检察院加强对知识产权纠纷特点和趋势分析，通过发布典型案例、编撰类案办案指南、提出司法建议、检察建议等方式，为市场主体、行政部门、行业协会、科研机构等提供指引。

**第二十二条** 公安机关应当依法办理知识产权犯罪案件，支持知识产权具体管理部门开展相关行政执法工作，可以根据需要按照有关规定提前介入涉嫌重大犯罪的知识产权行政案件。

**第二十三条** 人民检察院应当加强知识产权民事、行政、刑事案件法律监督，依法开展知识产权公益诉讼工作。

**第二十四条** 人民法院应当推进知识产权民事、行政、刑事案件审判“三合一”改革，构建技术调查官、专家陪审员、专家辅助人、技术咨询和鉴定等知识产权多元化技术事实查明机制，健全知识产权纠纷特邀调解制度。

人民法院应当推进知识产权案件诉讼程序繁简分流，强化举证责任分配，鼓励当事人充分利用区块链、电子数据平台等第三方保全证据方式收集、固定证据，提高知识产权案件审判质量和效率。

人民法院应当加大知识产权民事、行政、刑事案件的执行力度，探索知识产权财产性权益的新型执行方法。

**第二十五条** 人民法院应当完善知识产权侵权损害赔偿制度，综合考虑知识产权市场价值、侵权人主观过错以及侵权行为的持续时间、影响范围、后果严重程度等因素，合理确定赔偿数额；正确适用知识产权惩罚性赔偿制度，加大对重复侵权、故意侵权和规模侵权的惩罚性赔偿，依法惩处严重侵害知识产权行为。

The people's courts, people's procuratorates, and public security agencies shall standardize intellectual property rights criminal case filing, prosecution, and adjudication procedures pursuant to applicable regulations and announce such.

The people's courts and people's procuratorates shall improve analysis of intellectual property rights dispute characteristics and trends, and provide guidance for market entities, administrative agencies, industry associations, and research institutes by publishing typical cases and issuing guidelines for similar cases, or submitting judicial and procuratorial recommendations.

**Article 22** Public security agencies shall resolve intellectual property rights crimes pursuant to law, support intellectual property rights agencies performing the related administrative law enforcement, and join intellectual property rights administrative cases involving major crimes early on a case-by-case basis pursuant to applicable law.

**Article 23** The people's procuratorates shall strengthen the legal oversight over civil, administrative, and criminal cases of intellectual property rights, and carry out public interest litigation of intellectual property rights pursuant to law.

**Article 24** The people's courts shall encourage cross-functional integration between civil, administrative, and criminal intellectual property rights case trials, and develop an alternative means to accomplish technical fact-finding for intellectual property rights, such as technical investigators, expert assessors, expert assistants, technical advice and appraisal, and improve the intellectual property rights dispute court-appointed mediation.

The people's courts shall use different procedures for complex and simple intellectual property rights litigation, improve the allocation of the burden of proof, and encourage the parties involved to make full use of blockchain, electronic data platforms, and other third party evidence preservation methods to collect and provide reliable evidence and improve intellectual property rights case trial quality and efficiency.

The people's courts shall improve the enforcement of civil, administrative, and criminal intellectual property rights judgments and explore new enforcement methods for intellectual property rights involving property and other rights.

**Article 25** The people's court shall improve the indemnification system for damages caused by intellectual property rights infringement, comprehensively consider intellectual property rights market value, culpable state of mind, duration, the extent of influence, severity, and other factors, and reasonably determine the indemnification amount; and correctly implement a punitive damages system for intellectual property rights, increase punitive damages for repeat infringements, intentional infringements, and mass tort, and penalize material intellectual property rights infringements pursuant to law.

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**第二十六条** 人民法院依法公正审理涉外知识产权案件，平等保护中外权利人合法权益，妥善处理与国际贸易有关的重大知识产权纠纷，依法妥善处理国际平行诉讼，确保案件裁判符合相关国际公约和国际惯例，促进国际贸易合作。

人民法院应当推进国际司法协助和交流合作，简化跨境文书送达、调查取证等程序，探索在互惠基础上相互承认与执行外国法院民商事判决的途径和方式。

**第二十七条** 海南自由贸易港知识产权法院应当建立与海南自由贸易港知识产权保护相适应的案件管辖制度和协调机制，加强对植物新品种、关键核心技术、重点领域、新兴产业等知识产权司法保护。

**第二十八条** 省知识产权主管部门应当会同人民法院、仲裁机构，加强知识产权确权与知识产权侵权纠纷处理程序的协调，建立健全知识产权无效宣告程序与知识产权侵权纠纷行政裁决、民事侵权诉讼、仲裁程序的衔接机制。

## 第四章 社会共治

**第二十九条** 就不相同或者不相类似商品或服务使用的未注册商标是复制、摹仿或者翻译他人未在国内注册的驰名商标，误导公众，致使该驰名商标持有人的利益可能受到损害的，在海南自由贸易港内禁止使用。

**第三十条** 使用注册商标的商品，经商标注册人或者其许可使用注册商标的单位、个人售出后，除该商品使用有关注册商标会对该注册商标的显著特征或者声誉造成损害的以外，任何单位或者个人可以在海南自由贸易港内进口、销售、使用该商品。

**Article 26** The people's courts shall adjudicate cases involving foreign intellectual property rights fairly pursuant to law, equally protect Chinese and foreign right holder legal rights, properly resolve major international trade intellectual property rights disputes, properly manage international parallel litigation pursuant to law, ensure court opinions and decisions comply with applicable international conventions and international practices and improve international trade collaboration.

The people's courts shall encourage international judicial assistance, exchanges, and collaboration, simplify cross-border document service procedures, investigation, and evidence collection, and encourage mutual recognition and enforcement of reciprocal civil and commercial judgments by foreign courts.

**Article 27** The Hainan Free Trade Port Intellectual Property Rights Court shall align the jurisdiction and coordination systems with intellectual property rights protection in the Hainan Free Trade Port and enhance judicial protection of intellectual property rights such as new plant varieties, and core technologies, key fields, and emerging industries.

**Article 28** Provincial intellectual property rights agencies, people's courts, and arbitration organizations shall strengthen coordination between the confirmation of intellectual property rights and intellectual property rights infringement dispute resolution, and create and optimize a connection system between the procedures of invalidation of intellectual property rights and administrative adjudication, civil infringement litigation and arbitration procedures of intellectual property rights infringement disputes.

## Chapter IV Social Co-governance

**Article 29** Unregistered trademarks created by copying, imitating, or translating other well-known trademarks not registered in China that may mislead the public and infringe upon the rights of the well-known trademark holders, regardless of whether used for the same or different types of goods or services, shall be prohibited in the Hainan Free Trade Port.

**Article 30** Any entity or individual may import, sell or use goods with registered trademarks purchased from the trademark registrar or entities or individuals authorized by the trademark registrar to use such registered trademarks in Hainan Free Trade Port unless such goods with registered trademarks may infringe upon the distinctive features or harm the reputation of the registered trademarks.

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允许境外注册商标商品在海南自由贸易港内加工并直接出口，但因此容易导致商品来源混淆或者误导公众的除外。

**第三十一条 禁止下列侵犯地理标志的行为：**

（一）通过使用地理标志或者产品描述，使公众误认为产品来自获得保护的地理标志产地范围的；

（二）在产地范围之外的相同或者类似产品上使用获得保护的地理标志或其意译、音译、字译，或者同时使用“类”“型”“式”“仿”等表述的；

（三）未经批准擅自在产品上使用地理标志专用标志的；

（四）在产品上使用与地理标志专用标志相似的标志，使公众误以为是地理标志专用标志的；

（五）销售本条第（一）项至第（四）项侵犯地理标志的产品的；

（六）法律、法规规定的其他行为。

**第三十二条** 海南自由贸易港举办展览、交易等展会活动，展会举办单位应当要求参展方提交未侵犯他人知识产权的合规性书面承诺或者知识产权相关证明文件。未按照要求提交的，展会举办单位不得允许其参加展会相关活动。

展会举办单位可以根据展会规模、期限等情况，自行或者与仲裁机构、行业组织、知识产权服务机构等设立展会知识产权纠纷处理机构。

参展项目被权利人递交书面材料投诉侵权的，展会举办单位应当立即要求参展方在限定时间内提供未侵权证明。参展方未提供的，展会举办单位应当责令参展方撤出该参展项目；不能撤出项目的，应当采取遮盖等方式处理。



Goods with overseas registered trademarks may be processed and exported directly in Hainan Free Trade Port unless the origin of such goods is misleading or the goods are likely to mislead the public.

**Article 31** The following infringements against geographical indications are prohibited:

(a) utilizing geographical indications or product descriptions to mislead the public into believing that the products originate from areas with protected geographical indications;

(b) utilizing protected geographical indications or their loose translation, transliteration, or direct translation, or expressions such as *lei* (class), *xing* (type), *shi* (mode), *fang* (pattern) on the same or similar products outside their place of origin;

(c) utilizing exclusive geographical indication labels on products without approval;

(d) utilizing labels similar to those used for geographical indications on products to mislead the public to believe that they are specific geographical indication labels;

(e) selling products that infringe upon geographical indications as provided in Paragraphs (a) through (d) of this Article; or

(f) other acts provided by laws and regulations.

**Article 32** Organizers of exhibitions, trade shows, and other similar activities in the Hainan Free Trade Port shall require participants to submit a written commitment or similar documents stating that they do not infringe upon third party intellectual property rights, and shall not allow such participants to participate in the exhibition or other exhibits if such documents are not submitted as required.

The exhibition organizer may set up a specific intellectual property rights dispute resolution institution either independently or together with arbitration, industry association, or intellectual property service institutes based on the scale and duration of the exhibitions.

Exhibition organizers shall immediately require participants to submit materials proving non-infringement within a specified time should rights holders submit written complaints claiming said participants infringed upon their rights. The exhibition organizer shall require the participant to withdraw from the exhibition if they fail to submit such materials. If the project cannot be removed, it shall be covered or hidden in other ways.

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知识产权具体管理部门认定参展方侵权行为成立的，应当通知展会举办单位责令参展方立即停止侵权行为，依法予以处理。

**第三十三条** 电子商务平台经营者应当建立知识产权保护内部管理制度和侵权投诉快速处理机制，配合知识产权具体管理部门处理知识产权纠纷和查处违法行为，及时采取删除、屏蔽、断开链接、终止交易和服务等必要措施，制止平台内经营者的侵权行为或者违法行为，维护知识产权权利人合法权益。

**第三十四条** 自然人、法人和非法人组织参加政府投资项目、政府采购和招标投标等活动，应当向有关主管部门提交不存在侵犯他人知识产权的书面承诺，并明确违背承诺的责任。

鼓励自然人、法人和非法人组织在书面合同中约定知识产权合规性承诺的内容以及相应的违约责任。

**第三十五条** 知识产权具体管理部门对知识产权纠纷作出行政裁决前，可以根据当事人自愿的原则，先行调解。

支持人民调解、商事调解或者其他具有调解职能的组织依法调解知识产权侵权纠纷。

知识产权侵权纠纷经调解组织调解达成协议的，双方当事人可以向有管辖权的人民法院申请司法确认。

**第三十六条** 鼓励当事人运用仲裁方式解决知识产权纠纷。对可能进入中国市场的过境货物涉嫌侵犯知识产权的，争议相关当事人可以约定临时仲裁。

海南自由贸易港仲裁机构应当加强知识产权纠纷仲裁专业化建设，广泛吸纳知识产权专业人才参与仲裁工作。

Intellectual property rights agencies shall notify the exhibition organizer to require the participant to immediately cease the infringement and resolve it pursuant to law should the agencies confirm the alleged infringement.

**Article 33** E-commerce platform operators shall create an internal intellectual property rights protection management system and a quick response system for infringement complaints, cooperate with the intellectual property rights competent agencies managing intellectual property rights disputes and investigating illegal acts, and promptly take the necessary action, such as deleting, blocking, unlinking, and terminating transactions and services to stop the infringement or violations committed by operators in the platform and protect the intellectual property rights owners' legal rights.

**Article 34** Where individuals, juristic persons, or unincorporated entities participate in government investment projects, government procurement, bidding, or other similar activities, they shall submit a written commitment to competent agencies warranting that there is no infringement of third party intellectual property rights and specify liability for the violation of the commitment.

Individuals, juristic persons, and unincorporated entities shall be encouraged to specify the contents of the intellectual property rights commitments and the applicable breach of contract liability in written contracts.

**Article 35** The designated intellectual property rights agencies may first conduct a mediation based on the principle of mutual willingness before delivering an administrative ruling on intellectual property rights disputes.

The people's mediation, commercial mediation, or other mediation organizations shall receive support to mediate intellectual property rights infringement disputes pursuant to law.

Either party may request approval from a competent people's court if an intellectual property rights infringement dispute is resolved through mediation by a mediation organization.

**Article 36** The parties involved are encouraged to resolve intellectual property rights disputes through arbitration and may agree to an ad hoc arbitration if transit goods that may enter the Chinese market are alleged to infringe on intellectual property rights.

The Hainan Free Trade Port arbitration organizations shall improve intellectual property rights dispute arbitration professional expertise, and extensively include intellectual property rights professionals in arbitration.

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支持境外知名仲裁机构及争议解决机构在海南自由贸易港依法开展知识产权纠纷仲裁业务。支持海南自由贸易港仲裁机构与境外知名仲裁机构及争议解决机构开展知识产权纠纷仲裁业务合作。

**第三十七条** 鼓励和支持公证机构创新公证证明和公证服务方式，依托电子签名、数据加密、区块链等技术，提供知识产权创新创造、运用流转、融资增信、证据保全、权利救济等公证服务。

在海南自由贸易港设立的可以办理涉外公证业务的公证机构，在海南自由贸易港范围内办理知识产权涉外公证业务，不受执业区域限制。

鼓励公证机构开展异地协作，为跨区域知识产权保护提供公证服务。

**第三十八条** 鼓励知识产权相关服务机构和人员，运用专业知识或者大数据分析技术，对知识产权纠纷事实认定、法律依据、处理结果和损害赔偿额计算等进行中立预判或者评估，为当事人快速解决纠纷提供指引和参考。

**第三十九条** 知识产权相关行业组织应当加强自律，建立健全知识产权行业服务标准和维权保护机制，配合知识产权具体管理部门开展行政执法工作，协助处理和调解知识产权纠纷，维护会员合法权益。

## 第五章 运用与服务

**第四十条** 省知识产权主管部门应当建立知识产权综合服务平台，加强知识产权信息化、智能化建设。

International renowned arbitration and dispute resolution organizations shall receive support to conduct intellectual property rights dispute arbitration in the Hainan Free Trade Port pursuant to law, and arbitration organizations of the Hainan Free Trade Port shall receive support to conduct intellectual property rights dispute arbitration in collaboration with internationally renowned arbitration and dispute resolution organizations.

**Article 37** Notary offices shall be encouraged and receive support to create innovative notarial certification and notarial services and to rely on technology such as electronic signatures, data encryption, and blockchain to provide notarial services such as intellectual property rights innovation and creation, implementation, and circulation, finance and credit support, evidence preservation, and rights remedies.

Hainan Free Trade Port notary offices eligible to manage notarization involving foreign intellectual property rights may manage such within the Hainan Free Trade Port, and their operations are not restricted by area.

Notary offices shall be encouraged to collaborate in different areas and provide notarial services for cross-regional intellectual property rights protection.

**Article 38** Intellectual property rights service providers and their employees are encouraged to use professional knowledge or big data analysis technology to conduct neutral intellectual property rights dispute prejudgments or evaluations on the fact-finding, legal basis, resolution results, and calculation of damages to provide guidance and reference for the parties involved to quickly resolve disputes.

**Article 39** Intellectual property rights industry organizations shall encourage self-discipline, implement and optimize intellectual property rights industry service standards and rights protection systems, cooperate with competent intellectual property rights agencies to carry out administrative law enforcement, assist in resolving and mediating intellectual property rights disputes, and protect their members' legal rights.

## Chapter V Application and Service

**Article 40** Provincial intellectual property rights agencies shall create a comprehensive intellectual property rights service platform and improve information technology and digitization of intellectual property rights work.

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知识产权具体管理部门应当依托知识产权综合服务平台，健全知识产权服务体系，为市场主体和社会公众提供知识产权政策指导、检索查询、维权援助等公共服务。

**第四十一条** 省知识产权主管部门应当建立专利导航制度。发展和改革、科学技术、工业和信息化、商务等相关部门应当对区域发展规划、重大产业规划、政府投资的重大经济科技项目组织开展专利导航，防范知识产权风险。

鼓励市场主体运用专利导航，提高创新发展决策的精准度和科学性。

**第四十二条** 单位可以依法处置其职务创新成果的知识产权，促进相关成果的实施和运用。被授予知识产权的单位可以采取股权、期权、分红等产权激励方式，使创新成果完成人合理分享创新收益。

规范和完善高等院校、科研机构等单位的知识产权项目管理制度，建立健全知识产权转移转化机制，鼓励建立专业化知识产权转移转化机构，促进知识产权成果实施和运用。

**第四十三条** 鼓励和支持高等院校、科研机构、知识产权服务机构、行业组织和企事业单位等建立知识产权联盟，开展知识产权研究、交流合作、联合维权和协作运用，实施知识产权资源共享，推进知识产权与产业发展深度融合。

**第四十四条** 支持金融机构创新知识产权质押融资、融资租赁、信托等金融服务模式，完善知识产权融资风险控制和质押财产处置机制，构建知识产权多元化融资模式。

The designated intellectual property rights agency shall improve the intellectual property rights service system and provide public services such as policy guidance, information inquiry, and rights protection assistance for market entities and the public based on the comprehensive intellectual property rights service platform.

**Article 41** Provincial intellectual property rights agencies shall create a patent mapping system. The development and reform, technology, industry and information technology, commerce, and other agencies shall organize patent mapping for regional development planning, major industrial planning, and major economic and technological projects receiving government investment to prevent intellectual property rights risks.

Market entities shall be encouraged to implement patent mapping to achieve accurate and science-based innovations and development.

**Article 42** Entities may dispose the intellectual property rights from the service information pursuant to law and encourage the implementation and use of related achievements. Entities granted intellectual property rights may adopt equity, options, dividends, and other property rights incentives to reasonably share innovation benefits with those who create them.

The higher learning institutes, research institutions, and other intellectual property rights entities shall standardize and improve the system for intellectual property rights projects management, create and optimize a system for intellectual property rights assignment and transformation, and be encouraged to create specialized intellectual property rights assignment and transformation institutes to promote the implementation and use of intellectual property rights achievements.

**Article 43** The higher learning institutions, research institutions, intellectual property rights service providers, industry organizations, businesses, and public institutions shall be encouraged and supported to set up intellectual property rights alliances, conduct intellectual property rights research, exchanges and collaboration, joint rights protection, and coordinated intellectual property rights implementation to share intellectual property rights resources and encourage the deep integration of intellectual property rights and industrial development.

**Article 44** A diversified intellectual property rights financing model shall be created to support financial institutes to innovate financial service models such as intellectual property rights pledge financing, financial leases, and trust, and improve intellectual property rights finance risk control and pledged assets disposal systems.

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鼓励和支持保险机构开展知识产权境外侵权责任险、专利执行险、专利被侵权损失险等保险业务。

外汇管理部门应当会同知识产权具体管理部门推行跨境知识产权贸易、投融资业务的外汇自由化、便利化政策。

**第四十五条** 在海南自由贸易港内转让、许可使用知识产权，从事技术开发及相关技术咨询、技术服务等取得的收入，依法享受税收优惠。

**第四十六条** 推动建设海南国际知识产权交易所，在知识产权转让、运用和税收政策等方面开展制度创新，规范探索知识产权证券化，完善知识产权信用担保机制。

**第四十七条** 支持知识产权服务业集聚发展，引进知识产权高端服务机构。支持有条件的海南自由贸易港重点园区根据需要建设综合性知识产权运营服务平台，培育国际化、市场化、专业化的知识产权服务机构。

鼓励知识产权评估服务机构开发针对不同应用场景的知识产权评估工具，围绕创新主体、市场主体的转让许可、投资融资等需求，提供规范、便捷的知识产权评估服务。

**第四十八条** 海南自由贸易港应当拓宽知识产权对外合作交流渠道，加强与世界知识产权组织、国际植物新品种保护联盟等国际组织的合作交流，推动“一带一路”知识产权经济协作发展，构建与国际接轨的知识产权保护体系。

鼓励和支持社会组织依法开展知识产权保护国际交流合作。



The insurance institutions shall be encouraged and receive support to provide overseas intellectual property rights infringement liability insurance, patent execution insurance, and patent infringement loss insurance services.

Foreign exchange agencies and the designated intellectual property rights agencies shall implement foreign exchange liberalization and facilitation policies for cross-border intellectual property rights trading, investment, and financing.

**Article 45** Any income arising out of the assignment or licensing of intellectual property rights and involvement in technology development and technical consultation and technical services in the Hainan Free Trade Port shall be entitled to preferential tax policies pursuant to law.

**Article 46** The development of the Hainan International Intellectual Property Rights Exchange shall be encouraged to carry out institutional intellectual property rights assignment, implementation and tax policy innovation, standardize intellectual property rights securitization exploration and improve the intellectual property rights credit guarantee system.

**Article 47** The consolidation and development of intellectual property rights services and high-end intellectual property rights services shall receive support and be implemented. Eligible Hainan Free Trade Port main zones shall receive support to develop comprehensive intellectual property rights operation service platforms on a case-by-case basis, and develop international, market-oriented, and specialized intellectual property rights service providers.

Intellectual property rights review service providers are encouraged to develop intellectual property rights review toolkits for different use cases, and provide standardized and easy intellectual property rights review services to meet innovator and market entity needs, such as license assignment and investment financing.

**Article 48** The Hainan Free Trade Port shall create more channels for foreign intellectual property rights collaboration and exchange, improve collaboration and exchange with international organizations such as the World Intellectual Property Organization and International Union for the Protection of New Plant Varieties, improve the intellectual property rights collaboration and development among countries included in the Belt and Road Initiative, and develop an intellectual property rights protection system in line with international standards.

Private organizations are encouraged and receive support to conduct international intellectual property rights exchanges and collaboration pursuant to law.

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## 第六章 监督管理

**第四十九条** 县级以上人民政府应当根据法律、法规规定并结合相关部门职责范围，建立由知识产权具体管理部门牵头，旅游和文化、公安、海关、综合执法等相关部门参与的联合执法机制，健全跨部门、跨区域知识产权行政执法联动响应与协作制度，实现违法线索互联、监管标准互通、处理结果互认。

**第五十条** 权利人或者利害关系人投诉知识产权侵权行为，知识产权具体管理部门对有证据证明存在侵权事实，如不及时制止将使权利人或者利害关系人合法权益受到难以弥补的损害的，经权利人或者利害关系人申请，可以先行发布禁令，责令涉嫌侵权人立即停止涉嫌侵权行为，并依法处理。

发布禁令前，可以要求权利人或者利害关系人提供适当担保。经调查，侵权行为不成立的，应当及时解除禁令。权利人或者利害关系人申请有错误的，应当赔偿被申请人因停止有关行为所遭受的损失。

涉嫌侵权人对禁令不服的，可以依法申请行政复议或者提请行政诉讼。

**第五十一条** 知识产权具体管理部门或者人民法院作出知识产权侵权行为成立的决定或者判决生效后，同一侵权行为人就同一知识产权再次实施相同类型侵权行为，经权利人或者利害关系人请求，知识产权具体管理部门调查属实的，可以直接责令侵权人立即停止侵权行为，并依法处理。

## Chapter VI Oversight and Administration

**Article 49** The people's governments at or above the county level and the administrative agencies shall create establish a joint law enforcement system led by intellectual property rights agencies as required by law and based on their authorities and duties, and shall involve other administrative agencies such as tourism and culture, public security, customs, and comprehensive law enforcement agencies and improve the intellectual property rights administrative law enforcement inter-agency and cross-regional collaborative response to achieve sharing of violation leads, regulatory standards, and resolution result recognition.

**Article 50** Upon the request of a rights holder or stakeholder, intellectual property rights agencies may issue an injunction to order alleged infringers to immediately cease the alleged infringement and resolve it pursuant to law where rights holders or stakeholders claim intellectual property rights infringement and provide documentation of such, and it would cause the rights holder or stakeholder to suffer irreparable damage to their legal rights if the infringement cannot be ceased in a timely manner.

Before issuing an injunction, the rights holder or stakeholder may be required to provide an appropriate guarantee. The injunction shall be promptly dismissed if the infringement cannot be verified after investigation. If the requester (the rights holder or stakeholder) is found to be at fault, it shall indemnify the respondent against any loss(es) suffered due to the ceased acts.

The alleged infringer may request administrative review or file an administrative suit pursuant to law if they feel wronged by the injunction.

**Article 51** The designated intellectual property rights agency may directly require the infringer to immediately cease their infringement and manage it pursuant to law upon the request of the rights holder or stakeholder should the infringer commit the same infringement of the same intellectual property rights after the intellectual property rights agency or the people's court makes a decision or judgment confirming the intellectual property rights infringement.

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**第五十二条** 知识产权具体管理部门应当归集自然人、法人和非法人组织的知识产权失信行为信息，依法纳入信用档案，根据信用风险分类结果实施差异化监管措施。

自然人、法人和非法人组织有下列失信行为之一的，应当将其列入严重失信主体名单：

（一）故意侵犯他人知识产权，构成犯罪的；

（二）故意侵犯他人知识产权或者提交非正常专利申请、恶意商标注册申请损害公共利益，性质恶劣、情节严重、社会危害较大，受到主管部门较重行政处罚的；

（三）在人民法院或者行政机关作出知识产权侵权行为成立的判决或者决定后，有履行能力但拒不履行、逃避执行的；

（四）法律、法规和国家规定应当列入知识产权严重失信主体名单的其他行为。

**第五十三条** 对列入知识产权严重失信主体名单的失信主体，应当实施下列惩戒措施：

（一）禁止或者限制其承接政府投资项目、参加政府招标投标；

（二）禁止或者限制其享受有关费用减免、政府资金扶持等优惠政策；

（三）取消其进入知识产权专利优先审查、快速授权、快速维权通道资格；

（四）取消其参加政府知识产权表彰评比资格；

（五）法律、法规和国家规定的其他惩戒措施。

**Article 52** Intellectual property rights agencies shall collect information on intellectual property rights misuse by individuals, juristic persons, and unincorporated entities, legally include it in their credit records and provide specific oversight based on the credit risk classification.

Individuals, juristic persons, or unincorporated entities committing any of the following acts shall be added to the entity blacklist:

(a) intentionally infringing third party intellectual property rights, thus constituting a crime;

(b) intentionally infringing upon the intellectual property rights of others, filing an abnormal patent application, or maliciously registering a trademark is subject to heavier administrative punishment by the competent agency in case that it is against the public interest, involves grave risks, and causes significant social harm;

(c) refusing to perform or avoiding enforcement after a people's court has made a judgment or an administrative agency has made a decision on the intellectual property rights infringement, despite having the ability to comply; or

(d) other acts that should be included in the entity blacklist provided by laws, regulations and national rules.

**Article 53** The following disciplinary action shall be taken against material violations committed by those in the entity blacklist:

(a) ban or restriction on performing government investment projects or participating in government bids;

(b) ban or restriction on benefiting from preferential policies such as fee reductions or government funding;

(c) removal of eligibility for prioritized patent protection review, quick authorization, and fast track;

(d) removal of eligibility to participate in intellectual property rights awards given by governments; and

(e) other disciplinary action provided by laws, regulations and state provisions.

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## 第七章 法律责任

**第五十四条** 侵权人因侵犯知识产权受到罚款处罚后，自行政处罚决定书生效之日起五年内再次实施同类违法行为的，知识产权具体管理部门可以按照有关法律、法规规定的相应罚款数额予以双倍处罚。

**第五十五条** 申请人恶意申请商标注册的，由申请人所在地或者违法行为发生地县级以上知识产权具体管理部门给予警告，有违法所得的，可以处违法所得五倍最高不超过五万元的罚款；没有违法所得的，可以处三万元以下的罚款。

**第五十六条** 对侵犯商业秘密的行为，除依据《中华人民共和国反不正当竞争法》的规定处理外，知识产权具体管理部门应当责令侵权人返还或者销毁载有商业秘密的图纸、软件或者其他有关载体，不得继续披露、使用或者允许他人使用商业秘密。

对侵权人利用权利人的商业秘密生产的产品，尚未销售的，知识产权具体管理部门应当监督侵权人销毁，但是权利人同意收购或者同意侵权人继续销售的除外。

**第五十七条** 违反本条例第三十一条规定，由违法行为发生地县级以上知识产权具体管理部门责令立即停止侵权行为，没收、销毁侵权产品和伪造地理标志专用标志的工具，违法经营额五万元以上的，可以处违法经营额五倍以下的罚款；没有违法经营额或者违法经营额不足五万元的，可以处二十五万元以下的罚款。

销售不知道是侵犯地理标志的产品，能证明该产品是自己合法取得并说明提供者的，由知识产权具体管理部门责令停止销售。

## Chapter VII Legal Liability

**Article 54** The designated intellectual property rights agency may double the amount of penalty provided by applicable law if the infringer commits a similar infringement within 5 years of the effective date of the administrative penalty decision and has been penalized once.

**Article 55** If an applicant applies for trademark registration in bad faith, the intellectual property rights agency at or above the county level where the applicant is located or where the violation occurs shall issue a warning. Moreover, a penalty equal to five times the amount of any illegal income generated but not more than 50,000 Yuan may be imposed, otherwise, a maximum 30,000 Yuan penalty may be imposed.

**Article 56** The designated intellectual property rights agency shall require infringers to return or destroy any drawings, software, or other media containing trade secrets, and shall not continue to disclose, use, or allow others to use such trade secrets unless the infringement involves trade secrets covered by the Anti-Unfair Competition Law.

The designated intellectual property rights agency shall oversee the destruction of any products produced by the infringer using trade secrets belonging to the rights holder that have not yet been sold unless the rights holder agrees to purchase such products or the rights holder authorizes the infringer to sell them.

**Article 57** The designated intellectual property rights agency at or above the county level where the violation occurs shall require anyone who violates Article 31 of these Regulations to immediately cease the infringement, confiscate, and destroy the infringing products, as well as any tools used to forge specific geographical indications. A penalty of less than five times the income obtained through illegal business shall be imposed if the income generated exceeds 50,000 Yuan. A penalty of less than 250,000 Yuan may be imposed if no income is earned from the illegal business or less than 50,000 Yuan is earned.

Intellectual property rights agencies shall order sales to be stopped if the infringer is not aware that the product sold or to be sold infringes upon geographical indications and can prove that the product was legally obtained, and is able to indicate the supplier.

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**第五十八条** 展会举办单位违反本条例第三十二条第一款、第三款规定，不履行管理义务的，由违法行为发生地县级以上知识产权主管部门责令改正，可以处三万元以上十万元以下的罚款。

**第五十九条** 涉嫌侵权人违反本条例第五十条第一款规定，拒不执行禁令停止涉嫌侵权行为，经认定构成侵权的，由发布禁令的知识产权具体管理部门按照有关法律、法规规定的相应罚款数额予以双倍处罚。

**第六十条** 除法律、法规另有规定外，知识产权侵权行为违法经营额按照下列方法计算：

- （一）侵权产品已经销售的，按照实际销售价格计算；
- （二）侵权产品尚未销售的，按照已经销售的同类产品的实际销售价格或者标示价格从高计算；
- （三）没有实际销售价格或者标示价格的，或者标示价格明显与产品价值不符的，按照与侵权产品相同或者相似的同类产品的市场中间价格计算；
- （四）侵权产品只在境外销售的，按照离岸价格计算。无法查明离岸价格的，可以参考同类合格产品的国际市场中间价格或者国内市场中间价格计算；
- （五）多次实施侵权行为且未经行政处理的，其违法经营额应当累计计算；
- （六）违法经营额应当扣除已经依法缴纳的税费，但不扣除实施该侵权行为过程中实际支出的合法成本；
- （七）法律、法规规定的其他能够合理计算侵权产品价格的方法。



**Article 58** If an exhibition organizer violates Paragraph 1 or 3 of Article 32 of these Regulations and fails to fulfill its management obligations, competent intellectual property rights agencies at or above the county level in the place where the violation takes place shall require the organizer to make corrections and may impose a penalty of not less than 30,000 Yuan and not more than 100,000 Yuan.

**Article 59** If infringers who allegedly violate Paragraph 1 of Article 50 of these Regulations do not comply with injunctions to stop the alleged infringements, the designated intellectual property rights agencies issuing injunctions may double the amount of penalty provided by applicable laws and regulations once the infringements are confirmed.

**Article 60** Unless otherwise provided by laws and regulations, income obtained through intellectual property rights infringement shall be calculated according to the following methods:

- (a) the actual selling price if the infringing product has been sold;
- (b) the higher of the actual selling price or market price of similar products already sold if the infringing product has not yet been sold;
- (c) the average market price of similar products equal to or similar to the infringing products if no actual selling or market price can be found or if the market price clearly does not match the product value;
- (d) the FOB price if the infringing products are only sold overseas, or the average international or domestic market price of similar eligible products if the FOB price cannot be determined;
- (e) the total income earned from the illegal business if the infringement has been committed repeatedly with no administrative penalty;
- (f) taxes and fees already paid pursuant to law shall be deducted from the total illegal business income, but legal costs actually incurred during the infringement process shall not be deducted; and
- (g) other methods to reasonably calculate the price of the infringing products as provided by laws and regulations.

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**第六十一条** 违反本条例规定，本条例未设定处罚而法律、法规另有处罚规定的，从其规定。

违反本条例规定的行为，依法决定由市、县、自治县综合行政执法机构实施处罚的，从其规定。

省负责专利执法的部门可以根据需要，委托具有专利执法条件的市、县、自治县综合行政执法机构实施专利行政处罚。

## **第八章 附 则**

**第六十二条** 本条例自 2022 年 1 月 1 日起施行。

**Article 61** Other laws and regulations shall control if they provide penalties for the violation of these Regulations.

Other laws shall control if they provide that comprehensive administrative law enforcement agencies of cities, counties, and autonomous counties must enforce the penalties for violations of these Regulations.

The provincial agency responsible for patent law enforcement may, as the case may be, authorize the comprehensive law enforcement agencies of cities, counties, and autonomous counties eligible for patent law enforcement to enforce administrative penalties for patent violations.

## **Chapter VIII Supplementary Provision**

**Article 62** These Regulations shall enter into force as of January 1, 2022.

