

# **Special Regulation No.11**

## **Concerning Intellectual Property Rights**

**Beijing International Horticultural Exhibition**

**Coordination Bureau**

## **CHAPTER I GENERAL PROVISIONS**

### **Article 1 Purpose**

Pursuant to Articles 34, 35 and 37 of the *General Regulations* of the International Horticultural Exhibition 2019, Beijing, China (hereinafter referred to as “the Expo”), this *Special Regulation* lays down the rules for the protection of intellectual property rights (hereinafter referred to as “IPR”) of Official Participants related to their participation in the Expo.

### **Article 2 Compliance with Laws and Regulations**

1. All Official Participants shall comply with the *General Regulations* and *Special Regulations* of the Expo, the relevant laws, regulations and rules of China, and the additional instructions and directives issued by the Organizer, which shall be in accordance with the *General Regulations* and the *Special Regulations* (hereinafter jointly referred to as “Laws and Regulations”).

2. Additional instructions and directives are issued by the Organizer to provide more information on related subjects and further specify the rights and obligations of Official Participants and the Organizer.

3. Official Participants shall comply with IPR-related international treaties which China has concluded or acceded to, including:

(1) *Paris Convention for the Protection of Industrial Property*;

(2) *Berne Convention for the Protection of Literary and Artistic*

*Works;*

*(3) Madrid Agreement Concerning the International Registration of Marks and the Protocol related to this Agreement;*

*(4) Universal Copyright Convention;*

*(5) Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks;*

*(6) International Convention for the Protection of New Varieties of Plants (1978);*

*(7) Convention for Establishing the World Intellectual Property Organization;*

*(8) Locarno Agreement for Establishing an International Classification for Industrial Designs;*

*(9) Patent Cooperation Treaty;*

*(10) Strasbourg Agreement Concerning the International Patent Classification;*

*(11) Convention for Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms;*

*(12) Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure;*

*(13) Agreement on Trade-Related Aspects of Intellectual Property Rights;*

*(14) WIPO Copyright Treaty;*

(15) *WIPO Performances and Phonograms Treaty*;

(16) *Treaty on Intellectual Property in Respect of Integrated Circuits*  
(*Washington Treaty*).

### **Article 3 Obligations of Official Participants**

1. If an Official Participant violates the Laws and Regulations or infringes upon any third party's IPR, it shall be held fully responsible for such violation. The Organizer shall under no circumstances bear any responsibility arising therefrom.

2. An Official Participant may take legal action against infringements upon its IPR, if any, by another Official Participant within the Expo Site, after having given prior notice to the Commissioner General of the Expo. In case of any explicit IPR infringements, the Commissioner General of the Expo is entitled to demand a stop of the infringement activities by the offending Official Participant.

## **CHAPTER II PROTECTION OF PATENT RIGHTS**

### **Article 4 Scope of Protection**

1. *The Patent Law of the People's Republic of China* (hereinafter referred to as the "*Patent Law*") protects inventions-creations including inventions, new utility models, and designs.

2. An invention refers to any new technical solution relating to a

product, a process or improvement thereof.

3. A new utility model refers to any new and applicable technical solution relating to the shape, structure, or the combination of the two of a product.

4. A design refers to any new design of the shape, pattern, color or the combination thereof, which creates aesthetic pleasure and is fit for industrial application.

## **Article 5 Circumstances under Which Patent Rights Are Not Granted**

1. No patent right shall be granted for any invention, utility model or design which are inconsistent with the laws of China or social morality or detrimental to public interest. No patent right shall be granted for any invention completed based on genetic resources that are obtained or utilized inconsistent with the laws and administrative regulations of China.

2. Pursuant to the *Patent Law*, no patent right shall be granted in the case of any of the following:

- (1) scientific discoveries;
- (2) rules and methods for mental activities;
- (3) methods for the diagnosis and treatment of diseases;
- (4) animal and plant varieties;
- (5) substances obtained by means of nuclear transformation;

(6) designs that are mainly used for marking the pattern, color or the combination of the two of prints.

3. For processes and techniques used in producing products referred to in Item (4) of the preceding paragraph, patent right may be granted pursuant to the *Patent Law*, while new plant varieties shall be protected by the *Regulations for the Protection of New Varieties of Plants of the People's Republic of China*.

## **Article 6 Application for Patent Rights**

1. Any invention, utility model and design of an exhibitor of an Official Participant shall only be protected by the Laws and Regulations following the granting of patent rights by the State Intellectual Property Office of China (hereinafter referred to as the “SIPO”).

2. If a foreign applicant having no permanent residence or office in China files for a patent in China, under the *Patent Law*, the application shall be processed through a patent agency duly established in accordance with the laws pursuant to the agreements concluded between China and the country of which the applicant is a citizen, or international treaties to which both countries are parties, or on the basis of the principle of reciprocity.

3. If, within twelve months from the date the applicant first files an application for an invention or utility model patent in a foreign country,

or within six months from the date the applicant first files an application for a design patent in a foreign country, he/she files an application for a patent in China for the same subject matter, he/she may enjoy the right of priority in accordance with the agreements concluded between the said foreign country and China, or in accordance with the international treaties to which both countries have acceded, or on the principle of mutual recognition of the right of priority.

## **Article 7 The Granting of Patent Rights**

1. The SIPO shall review applications for patents on the basis of whether they meet the requirements and qualifications for granting a patent pursuant to the *Patent Law*.

2. Inventions and utility models for which patent rights are to be granted shall be ones which are novel, creative and of practical use. A design for which the patent right is granted is not an existing design, and no application should have been filed by any unit or individual for any identical design with the SIPO before the date of application for patent right and no identical design should have been recorded in the patent documentations announced after the date of application. Designs for which the patent right is to be granted shall be ones which are distinctly different from the existing designs or the combinations of the features of existing designs.

3. An invention-creation for which a patent application has been filed does not lose its novelty within six months before the date of filing in any of the following cases:

(1) it was first exhibited at an international exhibition sponsored or recognized by the Chinese Government;

(2) it was first publicized at designated academic or technical meetings;

(3) it was disclosed without the consent of the applicant.

## **Article 8 Protection of Patent Rights**

1. Following the granting of patent right for an invention or utility model, unless otherwise provided for in the *Patent Law*, no entity or person may, without the authorization of the patentee, exploit the patent, i.e., for commercial purposes, make, use, offer to sell, sell or import the patented product or use the patented process, and use, offer to sell, sell or import the product made directly with the patented technique.

2. Following the granting of the patent right for a design, no entity or person may, without the authorization of the patentee, exploit the patent, i.e., for commercial purposes, make, offering to sell, sell or import the product bearing patented design.

3. The duration of patent rights for inventions shall be, as from the date of filing, twenty years, and the duration of patent right for utility



models and designs shall be, as from the date of filing, ten years. The patentee shall pay an annual fee beginning with the year in which the patent right is granted.

## **CHAPTER III TRADEMARK PROTECTION**

### **Article 9 Scope of Protection**

1. An application for trademark registration may be filed in China for any visible mark, including words, designs, letters, numbers, 3-D (three-dimensional) marks, color combination and sounds, or the combination of the above-mentioned elements, which can set the commodities of natural persons, legal persons or other organizations apart from those of others.

2. Pursuant to the *Trademark Law of the People's Republic of China* (hereinafter referred to as the “*Trademark Law*”), registered trademarks include commodity trademarks, service trademarks, collective marks and certification marks.

### **Article 10 Application for Registration of Trademarks**

1. Applications by exhibitors of Official Participants for trademark registration in China may be filed with the Trademark Office under the State Administration for Industry and Commerce (hereinafter referred to as the “Trademark Office”) through trademark service agencies duly

established in accordance with the laws on the basis of agreements concluded between China and the country of which the applicant is a citizen, or with international treaties to which both countries are parties, or on the basis of the principle of reciprocity.

2. Exhibitors of Official Participants applying for trademark registration in China may file applications with the WIPO International Bureau through the trademark administration of the country they represent for trademark registration and for designating China for territorial extension pursuant to the *Madrid Agreement* and the *Madrid Protocol* to gain trademark protection in China.

## **Article 11 Protection of Trademarks**

1. Pursuant to the *Trademark Law*, the right to exclusive use of a registered trademark shall be limited to approved trademarks and to commodities on which the use of a trademark has been approved.

2. Any of the following shall constitute an infringement upon the right to exclusive use of a registered trademark:

(1) using a trademark that is identical with a registered trademark in connection with the same goods without the authorization of the owner of the registered trademark;

(2) using a trademark that is similar to a registered trademark in connection with the same goods, or that is identical with or similar to a

registered trademark in connection with the same or similar goods, without the authorization of the owner of the registered trademark, which may cause public confusion;

(3) selling goods that violate the exclusive right to use a registered trademark;

(4) counterfeiting, or making, without authorization, representations of another party's registered trademark, or selling such representations;

(5) altering another party's registered trademark without authorization and selling goods bearing such an altered trademark;

(6) helping any others to infringe the exclusive right to use its registered trademark with intention to provide convenience for infringing the exclusive right to use its registered trademark;

(7) otherwise causing prejudice to another party's exclusive right to use its registered trademark.

3. The provisions of Paragraphs 1 and 2 on commodity trademarks also apply to service trademarks.

4. The duration of validity of a registered trademark shall be ten years from the date of approval of the registration. To continue to use the registered trademark beyond the duration of validity, the registrant should file an application for renewal of registration within twelve months before the expiration of validity. If the registrant fails to make such an application within that period, an extension of validity of six months may

be granted. If no application is filed before the extension expires, the registered trademark shall be canceled. The duration of validity for each renewal of registration shall be ten years.

5. Well-known trademarks are entitled to special protection in China pursuant to the Laws and Regulations.

## **CHAPTER IV COPYRIGHT PROTECTION**

### **Article 12 Scope of Protection**

1. *The Copyright Law of the People's Republic of China* (hereinafter referred to as the “*Copyright Law*”) protects the copyright of original works in literature, art, natural science, social science and engineering, and other relevant rights owned by publishers, performers, sound or visual record producers, radio broadcasters and television stations.

2. Works eligible for protection under the *Copyright Law* may take the following forms:

- (1) writings;
- (2) oral works;
- (3) music, drama, quyi, dance and acrobatics;
- (4) painting and architecture;
- (5) photography;
- (6) cinematography and works created through methods similar to film production;

(7) graphic works such as project and product design drawings, maps and sketches as well as models;

(8) computer software, and

(9) other works specified by laws and administrative regulations.

3. The execution of copyrights shall not be against the laws and rules in China, or cause any damage to the public interests.

### **Article 13 Protection of Copyrights**

1. Pursuant to the *Copyright Law*, copyright comes into effect as from the date of the completion of the work concerned. Exhibitors of Official Participants may, pursuant to the relevant laws and regulations the *Copyright Law*, register on a voluntary basis their exhibits, which are under their own copyrights, or other copyrighted works protected by the *Copyright Law* with the competent governmental departments responsible for copyright registration in China.

2. Copyright includes the right of publication, the right of authorship, the right of alteration, the right of integrity of the work, the right of reproduction, the right of distribution, the right of lease, the right of exhibition, the right of performance, the right of show, the right of broadcast, the right of communication of information network dissemination, the right of production, the right of adaptation, the right of translation, and the right of compilation and other relevant rights.

3. The copyright over works which exhibitors of Official Participants own pursuant to agreement concluded between China and the country where the exhibitors come from or reside permanently or pursuant to international treaties to which both countries are members, shall be protected by the *Copyright Law*. Works by exhibitors of Official Participants first published in China shall enjoy copyright protection under the *Copyright Law*. Works of authors from countries which have not signed agreement with China or have not acceded to the international treaties to which China is a party shall be protected under the *Copyright Law*, if they are first published in a contracting party of international treaties to which China has acceded or is simultaneously published in contracting parties and non-members.

#### **Article 14 Use of Musical Works**

Official Participants who wish to use music works protected under the *Copyright Law* should seek prior authorization from the copyright owners or the collective management organizations of music-works-related copyrights, and pay due royalties, unless otherwise stipulated in the Laws and Regulations.

### **CHAPTER V RIGHT TO NEW VARIETIES OF PLANTS**

#### **Article 15 Scope of Protection**

1. New varieties of plants under the protection of the *Regulations of The People's Republic of China on the Protection of New Varieties of Plants* (hereinafter referred to as “*Regulations on the Protection of New Varieties of Plants*”) are referred to as cultivated varieties, or developed ones based on discovered wild plants, which possess novelty, distinctness, uniformity and stability, and which are designated by adequate denominations.

2. The new variety for which a variety right has been applied for shall be under the plant genera and species included in the national list of protected plant genera and species.

#### **Article 16 Application for Right to New Varieties of Plants**

1. Applications by exhibitors of Official Participants for the right to new plant varieties in China shall be processed on the basis of the agreement concluded between China and the country of which the applicant is a citizen, or international treaties to which both countries are parties, or on the basis of the principle of reciprocity.

2. The Ministry of Agriculture of China and State Forestry Administration of China are responsible for examining and approving right to new plant varieties.

3. If an application for a variety right by a applicant is made in China within twelve months from the date on which this application was

first filed in a foreign country, it shall, pursuant to agreements concluded between China and the country of the applicant, or international treaties to which both countries are parties, or on the basis of the principle of mutual recognition of the right of priority, enjoy the right of priority.

### **Article 17 Protection of Right to New Varieties of Plants**

1. The entity which or the person who has accomplished the breeding enjoys an exclusive right on his or its protected variety. Except otherwise provided in *Regulations on the Protection of New Varieties of Plants*, no other entities or persons shall, without the authorization of the owner of the variety right (hereinafter referred to as the “variety right owner”), produce or sell for commercial purposes the propagating material of the said protected variety, or use repeatedly for commercial purposes the propagating material of the said protected variety in the production of the propagating material of another variety.

2. The term of protection of a variety right, counted from the date of grant thereof, shall be twenty years for vines, forest trees, fruit trees and ornamental plants and fifteen years for other plants.

## **CHAPTER VI PROTECTION OF OTHER IPR**

### **Article 18 Right to Layout design of Integrated Circuits**

1. An exhibitor of official participant may apply for registration with



the SIPO Integrated Circuits layout designs if they are first commercially produced in China, or if the country which it represents has concluded an agreement on the protection of layout design with China or that both countries are parties to international treaties on the protection of layout design. Unregistered layout designs are not entitled to the right of IC layout design.

2. Foreign applicants who do not have permanent residence or office in China may apply for exclusive right to IC layout design through agencies duly established with the laws.

3. Layout designs, for which no application for registration are filed with the SIPO within two years of their commercial production anywhere in the world, shall no longer be eligible for registration by the SIPO.

## **Article 19 Customs Protection of IPR**

1. China prohibits the import and export of goods which infringe upon IPR.

2. IPR related to imported or exported goods eligible for protection by China Customs include the following:

- (1) exclusive rights to trademark;
- (2) patent rights;
- (3) copyright and other relevant rights;
- (4) other IPRs under Customs protection in accordance with China's

laws.

3. If goods of suspected infringement are found pending importation or exportation, an IPR proprietor of an official participant may apply to China Customs at the port of entry or exit to impound such goods, and shall provide to the Customs a guarantee deposit not exceeding the value of the goods in question.

## **Article 20 Other IPRs**

Other IPRs such as geographical marks, business secrets, brand names and business reputation shall be protected in China pursuant to the Laws and Regulations.

# **CHAPTER VII SPECIAL MEASURES OF PROTECTION**

## **Article 21 Exhibition Certificate**

1. Exhibitors of Official Participants may file patent applications with the SIPO for works of invention-creation first exhibited at the Expo within six months of the exhibition, during which time the application will not lose its novelty. The exhibitor concerned may apply for and obtain exhibition certificates thereof from the Organizer.

2. If a trademark is used for the first time at the Expo, the exhibitor of Official Participant concerned may enjoy the right of priority in filing an application with the Trademark Office for registration of the same

trademark for identical commodities in China within six months as from the date when the trademark is used. The exhibitor concerned may apply for and obtain an exhibition certificate thereof from the Organizer.

## **Article 22 Performance Certificate**

The Organizer may provide a performance certificate for artists of Official Participants performing at the Expo Site during the Expo.

## **Article 23 Application Facilitation**

The relevant Chinese government departments shall provide facility for exhibitors of Official Participants in applying for patent right registration, trademark registration, copyright registration, new plants varieties registration, layout design of integrated circuits registration, and in reporting IPR to the Customs for the record.

## **Article 24 On-site Office**

During the Expo, relevant Chinese government departments shall set up a joint on-site office at the Expo Site to answer questions from Official Participants concerning IPR protection and assist Official Participants in handling IPR-related matters and settling IPR-related dispute involving Official Participants.

## **Article 25 Preventive Measures**

During the Expo, the Organizer shall take measures to prevent acts of infringement on IPR of Official Participants, and prohibit, unless otherwise permitted by the Laws and Regulations, any unauthorized audio and video recording and filming of exhibitions, forums and performances of Official Participants.

## **Article 26 Provision of Information**

The Organizer, in order to offer conveniences, shall provide Official Participants with a list of qualified and reputable IPR agencies registered in China. The Organizer shall also provide Official Participants with a guide on IPR protection explaining in detail effective ways of protecting IPR of Official Participants in China.