Article 14:

Patent right is an exclusive right granted by law, but the exercise of patent right is not without any restrictions. The exercise of patent right shall follow the principle of good faith, in a manner permitted by law, and in a way permitted by law. The conduct of abusive use of patent right, which harms public interest and impairs technological advancement, should be regulated by patent law and other laws and regulations. Current patent law contains restrictions on the exercise of patent right, such as compulsory license, and provisions on [situations] not deemed infringement, but because of the lack of a basic principle to guide the above provisions, there is no sufficient legal basis for the people’s courts when reviewing cases and for the administrative agencies when developing relevant regulations. Copyright Law, Trademark Law, other intellectual property laws and the WTO TRIPS Agreement all provide the basic principles to exercise patent right. Therefore, it is necessary to add the principle clause into patent law, to reflect the regulation on the abusive use of patent right, the basic position to balance the interests of patent owners and the public. The Draft used the other laws as references, and proposed to add to the general provisions the following: “the implementation of patent right shall abide to the good faith principle, shall not harm public interests, shall not improperly exclude or restrict competition, shall not impede the advancement of technology.”

Article 80:

Article 80 deals with patent owner and licensee’s rights and obligations under license of right. Anyone who wants to implement a patent under license of right shall notify the patent owner in writing and pay license fee. A patent of right declared by a patent owner means that it allows anyone to implement the patent, it can no longer implement its patent by granting the others exclusive license. Similarly, the patent owner shall not make an injunction request against unauthorized implementation of its patent.

Article 82:

Properly handle the relationship between standards and patents is of significant importance to promote the application of advanced technologies, to promote the development of related industries and to protect the interests of the standards implementers and consumers’. Patent owner who participates in the standard-setting process should follow the principle of good faith, exercise reasonable efforts to disclose its standard essential patents. In order to prevent patent owner who participates in the standard-setting process from not disclosing its standard-essential patents, [and] incorporating its patented technologies into a standard, [then] after the implementation of the standard, “hold-up” implementers of the standard, damaging the interests of the implementers and consumers, it is necessary for the patent law to regulate the conduct.

In order to balance the interests among patent owners, standard implementers and consumers, after integration of domestic and foreign legal practices, the Draft sets forth an implied license system for
standard-essential patents, which means, where the patent owner who participates in the standard-setting process does not disclose its standard-essential patents, it is deemed to permit the implementers of the standard to use its patented technologies. Under this circumstance, the patent owner does not have the right to bring a lawsuit against the implementers for infringing its standard-essential patents. However, implied license does not mean a free license, the patent owner still has the right to require the standard implementers to pay a reasonable royalty. The amount of royalty shall not be unilaterally decided by the patent owner, but shall be negotiated by the parties. Where the two parties are not able to reach an agreement, the patent administration department under the local people’s government shall adjudicate; [a party] may bring a lawsuit with the people’s court if not satisfied with the ruling.