

Measures for Management of Patent Agencies
Promulgated by the State Intellectual Property Office on 2003-6-6

Chapter I General Provisions

Article 1 In order to perfect the system of patent agencies, maintain the normal order of patent agency industry and guarantee the practice of by the patent agencies and patent agents by force of law, the Measures are formulated according to the Patent Law, the Regulations on Patent Agencies and the relevant provisions of the State Council.

Article 2 The State Intellectual Property Office and the intellectual property offices of the provinces, autonomous regions and municipalities directly under the Central Government shall manage and supervise patent agencies and patent agents according to the Patent Law, the Regulations on Patent Agencies and the Measures. All China Association of Patent Agents shall organize and guide patent agencies and patent agents to perform the Patent Law, the Regulations on Patent Agencies and the Measures by example, regulate professional conducts, strictly adopt professional self regulation, and increasingly improve professional service level.

Chapter II Establishment, Modification, Close-up and Revocation of Patent Agencies and their office

Article 3 the organization form of patent agencies shall be a partnership patent agency or a limited liability patent agency. A partnership patent agency shall be jointly invested and initiated by at least 2 persons, and a limited liability patent agency shall be jointly invested and initiated by at least 5 persons.

Partners of the partnership patent agency shall bear unlimited joint liability for the debts of the patent agency; partners of the limited liability patent agency shall bear the liability for the debts of the patent agency with all its assets.

Article 4 The establishment of a patent agency shall meet the following conditions:

- (1) having the agency name in compliance with Article 7 of the measures;
- (2) having a partnership agreement or Articles of association;
- (3) having partners or shareholders stipulated by Articles 5 and 6 of the measures;
- (4) having necessary funds, which shall be no less than RMB50,000 if a partnership patent agency is to be established, or which shall be no less than RMB100,000 if a limited liability patent agency is to be established;
- (5) to have fixed offices and necessary working facilities;

Where a law firm applies to run the patent agency services, there shall be at least 3 full-time lawyers in this law firm, each of whom has the patent agent qualification.

Article 5 Partners or shareholders of a patent agency shall meet the following conditions:

- (1) having the patent agent qualification;
- (2) having over 2 years experiences on the practice of patent agencies;
- (3) engaging in the full-time the patent agency services;
- (4) being under the age of 65 when applying for establishing a patent agency;
- (5) having good behavior.

Article 6 a person who has one of following circumstance shall not be the partner or shareholder of a patent agency:

- (1) having no complete capacity of civil disposition
- (2) working in state organs or enterprises and institutions and not formally go through formalities of resignation, dismissal or retirement;
- (3) less than 2 years as a partner or shareholder of the other patent agency
- (4) less than 3 years circulated a notice of criticism stipulated by Article 5 of Rules on Disciplinary of Patent Agencies or reprimanded by certificate reclamation of the patent agent.
- (5) punished by criminal penalty (except for committing crimes by negligence).

Article 7 A patent agency shall only have and use one name.

The name of a patent agency shall be composed of the name of the city, font size and "Patent Agency Firm", "Patent agency Co., Ltd." and "Intellectual property Agency Firm", "Intellectual property Agency Co., Ltd.". Its font size shall not be, throughout the country, identical with or similar to another patent agency's font size that is being or has been used.

Where a law firm runs the patent agency services, it may use the name of this law firm.

Article 8 Whoever applies to establish a patent agency shall submit the following application materials:

- (1) application form for the establishment of the patent agency;

- (2) partnership agreement or articles of association of the patent agency;
- (3) asset evaluation certificate;
- (4) duplicates of the patent agent qualification certificates and ID cards;
- (5) resumes and certification on the personnel file and duplicates of the retirement certification;
- 6) certification of offices and working facilities;
- (7) other evidentiary material.

A law firm that applies to run the patent agency services shall submit the following application materials:

- (1) the application form for running the patent agency services;
- (2) a letter issued by the competent administrative organ of justice on approving the applicant to run the patent agency services;
- (3) partnership agreement or the articles of association of the law firm;
- (4) duplicate of the practice permit of the law firm and attestation of funds;
- (5) duplicates of lawyer licenses of the patent agents, duplicates of the patent agent qualification certificates and duplicates of the ID cards;
- (6) certification of offices and working facilities;
- (7) other evidentiary materials.

The above-mentioned evidentiary materials shall be those issued within 6 months before applying for establishment of a patent agency or undertaking of patent agency practice revocation.

Article 9 The procedures for approving the establishment of a patent agency are as follows:

- (1) whoever applies to establish a patent agency shall apply to the intellectual property office of the province, autonomous region or municipality directly under the Central Government at his locality. The intellectual property office of the province, autonomous region or municipality directly under the Central Government shall, after examination, submit the application to the State Intellectual Property Office for approval within 30 days upon receipt of the application if the application has met the conditions provided for in the Measures; or shall notify the applicant in written form within 30 days upon receipt

of the application if the application fails to meet the conditions provided for in the Measures.

(2) The State Intellectual Property Office shall, within 30 days upon receipt of the submitted documents, make a decision on approving the application which meets the conditions provided for in the Measures, notify the intellectual property office of the province, autonomous region or municipality directly under the Central Government who submitted the application and issue the registration certificate of patent agency and the agency code; or shall, within 30 days as of the receipt of the submitted documents, notify the intellectual property office of the province, autonomous region or municipality directly under the Central Government to re-examine the application which does not meet the conditions provided for in the Measures.

A law firm that applies to run the patent agency services shall be approved with reference to the above-mentioned provisions.

Article 10 In case of modifying registration matters on name, address, articles of association, and partner or shareholder, the patent agency concerned shall apply to the State Intellectual Property Office and submit the application to the intellectual property office of the province, autonomous region or municipality directly under the Central Government at his locality. The modification shall come into force upon approval of the State Intellectual Property Office.

Article 11 In case of winding up or revocation, the patent agency concerned shall after properly handling with various matters not settled apply to the intellectual property office of provinces, autonomous regions or municipalities directly under the Central Government at his locality. If agreed upon review, registration certificate of patent agency and the mark brand shall be submitted to the intellectual property office of the province, autonomous region or municipality directly under the Central Government at his locality. The State Intellectual Property Office shall handle with the formalities of winding-up or revocation.

Article 12 In case of establishing office in the province, the patent agency concerned shall apply to the intellectual property office of provinces, autonomous regions or municipalities directly under the Central Government at his locality. If approved, it shall be filed by the intellectual property office of provinces, autonomous regions or municipalities directly under the Central Government to the State Intellectual Property Office.

In case of cross province establishment of office, the patent agency concerned shall after obtaining consent of the intellectual property office of provinces, autonomous regions or municipalities directly under the Central Government at his locality apply to the intellectual property office of provinces, autonomous regions or municipalities directly under the Central Government at his office locality. If approved, it shall be filed by the intellectual property office of provinces, autonomous regions or municipalities directly under the Central Government at his office locality to the State Intellectual Property

Office.

Article 13 A patent agency applying to establish an office shall be compliance with following conditions:

- (1) the time of establishment more than two years;
- (2) having over 10 patent agents;
- (3) having gone through the annul examination of the previous year.

Article 14 A patent agency shall be compliance with following conditions:

- (1) having over 2 full-time patent agents assigned or engaged by the patent agency;
- (2) having fixed offices and necessary funds;
- (3) The name of the office shall be composed of the full name of the patent agency, the name of the city at the office locality and "Office".

Article 15 The intellectual property office of provinces, autonomous regions or municipalities directly under the Central Government can additionally stipulate other conditions and procedures for patent agencies establishing offices in their administrative areas and submit the relevant provisions to the State Intellectual Property Office.

Article 16 The offices of the patent agencies shall be not handle with the patent agency services with the their solitary name, and their personal matters, finance and service shall be unified managed by their patent agency. The patent agencies shall bear the civil liability to the service activities of their offices.

In case of cross province establishment of offices, their offices shall accept the instruction and supervision of the intellectual property offices of provinces, autonomous regions or municipalities directly under the Central Government at their locality.

Article 17 In case of winding up or revocation, the office concerned shall after properly handling with various matters not settled apply to the intellectual property office of provinces, autonomous regions or municipalities directly under the Central Government at their locality. If approved, it shall be filed by this intellectual property office to the State Intellectual Property Office, and shall submit with a copy to the intellectual property offices of provinces, autonomous regions or municipalities directly under the Central Government at their locality.

In case of winding up or revocation, the office shall terminate at the same time.

Chapter III The Professional Practice of the Patent Agents

Article 18 The professional practice of the patent agents shall accept the engagement and appointment of the approval established patent agency to establish and have professional practice certificates.

Article 19 When engaging patent agents, the patent agency shall reach an engagement agreement with the patent agents in the principle of free will and mutual consent through consultation, and both parties to the engagement agreement shall abide by the engagement agreement.

Article 20 The issuance for the professional practice certificates of patent agents shall be compliance with following conditions:

- (1) having the patent agent qualification;
- (2) being able to full-time engage the patent agency services;
- (3) the person who have no experiences of the patent agency or patent inspection continually practiced over a year and participated in training before formal work;
- (4) engaged by the patent agencies;
- (5) being under the age of 70 when issuing the certificate;
- (6) having good behavior.

Article 21 A person who has one of following circumstance shall not be issued the professional practice certificate of the patent agent:

- (1) having no complete capacity of civil disposition;
- (2) prior to application working for other patent agency, not formally be dismissed by the patent agency and not go through revocation formalities on the professional practice certificate of the patent agent;
- (3) less than 1 year after collecting the professional practice certificate of the patent agent, transforming to other patent agency;
- (4) less than 3 years reprimanded by the certificate reclamation of patent agent stipulated by Article 5 of Rules on Disciplinary of Patent Agencies;
- (5) punished by criminal penalty (except for committing crimes by negligence).

Article 22 Whoever applies for issuing a patent agency shall submit the following materials:

- (1) application form for the professional practice certificates of the patent agents;

- (2) duplicates of the patent agent qualification certificates and ID cards;
- (3) certification on the personnel file or duplicates of the retirement certification;
- (4) employment agreement issued by the patent agencies;
- (5) prior to application working for other patent agency, shall submit dismissal certification of the patent agency;
- (6) in case of applying for issuing the professional practice certificates of the patent agents for the first time, shall submit the practice certification and certification for participating in training before formal work issued by the probation patent agency.

Article 23 The State Intellectual Property Office authorize All China Association of Patent Agents to take charge of the specific matters relating to issuance, modification and revocation of the professional practice certificates of the patent agents.

Article 24 Upon reviewing, All China Association of Patent Agents hold that the issuance and application of the professional practice certificates of the patent agents are compliance with the conditions stipulated by the measures, they shall issue the professional practice certificates of the patent agents within 15 days upon receipt of the application; otherwise, All China Association of Patent Agent shall notify the applicant with written form within 15 days upon receipt of the application.

Article 25 If the patent agencies want to dismiss the patent agents, they shall notify the patent agents 30 days in advance; If the patent agents want to dismiss, they shall notify the relevant patent agencies 30 days in advance.

If the patent agencies want to discharge the employment relationship with the patent agents, they shall withdraw the professional practice certificates of the patent agents and issue dismissal certification, and handle with revocation formalities of the professional practice certificates of the patent agents within 10 days upon issuing the dismissal certification to All China Association of Patent Agents.

Article 26 In case of close-up or revocation, the patent agencies shall withdraw all the professional practice certificates of their patent agents and handle with revocation formalities of the professional practice certificates of the patent agents within 10 days upon obtaining the review and approval of the intellectual property offices of the provinces, autonomous regions and municipalities directly under the Central Government.

Article 27 All China Association of Patent Agents shall keep filing with The State Intellectual Property Office and submit the relevant materials within 5 days upon issuing, modifying or repealing the professional practice certificates of the patent agents, and send with a copy to the intellectual property offices of the provinces, autonomous regions and municipalities directly under the Central Government at the locality of the patent

agencies.

Article 28 The person who holds no the professional practice certificate of the patent agent shall not engage the patent agency services for seeking for economic benefits in the name of the patent agent.

Article 29 In case of undertaking the patent services, the patent agents shall accept the authorization in the name of the relevant patent agencies, sign the written authorization contract with the authorizer, uniformly charge expenses and take into account according to the facts. The patent agents shall not accept the authorization without permission, handle with the patent agency services and charge expenses.

Chapter IV The Annul Examination of the Patent Agencies and the Patent Agents

Article 30 The State Intellectual Property Office is responsible for the organization and instruction on the annul examination of the patent agencies and the patent agents and authorizes the intellectual property offices of the provinces, autonomous regions, municipalities directly under the Central Government and the National Defense Patent Agency to implement the annul examination.

All the lawyer firms upon approval to establish the patent agencies and run the patent agency services shall participate in the annul examination. The offices of the patent agencies shall participate in the annul examination together with the patent agencies and submit the relevant materials with a copy to the intellectual property offices of the provinces, autonomous regions and municipalities directly under the Central Government at the locality of the offices.

All China Association of the Patent Agents shall coordinate and participate in the annul examination of the patent agencies and the patent agents.

Article 31 The annul examination of the patent agencies and the patent agents shall carry out once a year, from September 1 to October 31.

Article 32 The content on annul examination of the patent agencies and the patent agents shall include:

- (1) whether the patent agencies are or not compliance with the conditions for establishment stipulated by the measures;
- (2) whether the partners or shareholders of the patent agencies are or not compliance with the conditions stipulated by the measures;
- (3) whether the patent agents who work in the patent agencies hold the professional practice certificates of the patent agents and participate in the professional training according to the requirements;

(4) whether the patent agencies and the patent agents have the violation of laws and disciplines stated by Articles 6, 7 and 8 in Rules on Disciplinary of Patent Agencies (tentative);

(5) the quantity of the patent agency services since the patent agencies completed the last annual examination;

(6) the condition on the finance of the patent agencies;

(7) other content shall be examined each year.

Article 33 The patent agencies shall submit the following materials for the annual examination:

(1) the registration forms on the annual examination of the patent agencies and the patent agents;

(2) the working reports of the patent agencies;

(3) a copy of registration certificate of the patent agencies;

(4) the professional practice certificates of the patent agents;

(5) the financial statements;

(6) other required documents.

The working reports of the patent agencies shall fully reflect various contents stipulated by Article 32 of the measures.

Article 34 In case of any no compliance with the provisions of the measures upon annual examination, the intellectual property offices of the provinces, autonomous regions and municipalities directly under the Central Government shall order the patent agencies and the patent agencies to correct in the specified time; in case of no correction, it will be deemed as failing to meet annual examination.

In case of violation of laws and disciplines of Articles 6, 7 and 8 in Rules on Disciplinary of Patent Agencies (tentative) by the patent agencies and the patent agents upon annual examination, the case may be submitted for punishment by the Punishment Commission of Patent Agencies of the provinces, autonomous regions and municipalities directly under the Central Government.

Article 35 In case of qualification upon annual examination, the intellectual property offices of the provinces, autonomous regions and municipalities directly under the Central Government shall seal the stamp for qualification of the annual examination of the year; otherwise, the stamp will be sealed for disqualification of the annual

examination.

In case of failing to participate in the annual examination or disqualification of the annual examination, the patent agencies shall not handle with any new patent agency services at the State Intellectual Property Office and the intellectual property offices before reaching the qualification of annual examination the next time.

Article 36 The intellectual property offices of the provinces, autonomous regions and municipalities directly under the Central Government shall submit the summary of annual examination and the registration form of the annual examination to the State Intellectual Property Office for filing within 10 days upon completing the annual examination of the patent agencies and agents, and submit the results of annual examination of the professional practice certificates of the patent agents for filing by All China Association of Patent Agents.

The State Intellectual Property Office will publish to the public the results of the annual examination of the patent agencies and the patent agents.

Article 37 The workers of the State Intellectual Property Office, the intellectual property offices of the provinces, autonomous regions and municipalities directly under the Central Government and All China Association of Patent Agents keep secret the content that has not been published in the annual examination on patent agencies.

Chapter V Supplementary Provisions

Article 38 The interpretation of the Measures will be vested with the State Intellectual Property Office.

Article 39 These Measures shall come into force as of July 15, 2003.

(Source: China International Electronic Commerce Network)