

Part I

Preliminary Examination

Chapter 1 Preliminary Examination of Patent Applications for Invention

1. Introduction

Article 34 provides that where, after receiving a patent application for invention, the Patent Office, upon preliminary examination, finds the application to be in conformity with the requirements of the Patent Law, it shall publish the application promptly

after the expiration of eighteen months from the date of filing.

Upon the request of the applicant, the Patent Office may publish the application earlier. Thus, the preliminary examination of a patent application for invention is an indispensable procedure after receipt of the application and before its publication.

The main tasks of the preliminary examination of a patent application for invention are as follows:

Art.26
Rule 44

(1) to examine whether or not the application documents submitted by the applicant are in conformity with the provisions of the Patent Law and its Implementing Regulations. Where the Patent Office finds that there is any defect which can be rectified, it

shall notify the applicant to eliminate the defect by submitting rectifications so as to make the said documents meet the requirements for publication; or where the Patent Office finds that there

is any defect which cannot be corrected, it shall send an Office Action stating the nature of the defect, and terminate the examination procedure by rejecting the application;

Rule 45

(2) to examine whether or not other documents relating to the application, submitted by the applicant at the time of filing or thereafter, are in conformity with the provisions of the Patent Law and its Implementing Regulations. Where the Patent Office finds that there is any defect in these documents, it shall, depending on the nature of the defect, notify the applicant to eliminate the defect by submitting rectifications, or make the decision directly that the said documents are deemed not to have been submitted;

(3) to examine whether or not the other documents relating to the application were submitted by the applicant within the time

Art.26
Rule 44
Rule 45

limit prescribed in the Patent Law or its Implementing Regulations, or specified by the Patent Office. Where the said documents were not submitted within the time limit, or were submitted after the expiration of the time limit, the Patent Office shall, depending on the circumstances, make a decision that the application is deemed to have been withdrawn, or the said documents are deemed not to have been submitted; and

Art.75
Rules 95 & 96
Rules 99

(4) to examine whether or not the time limit of the payment of any relevant fee paid by the applicant and the amount of such fee are in conformity with the provisions of the Patent Law or its Implementing Regulations. If the fee is not paid, or not paid in full, or not paid within the time limit, the Patent Office shall, depending on the circumstances, make a decision that the application is deemed to have been withdrawn or the relevant request is deemed not to have been made.

Rules 44.1

The scope of the preliminary examination of a patent application for invention includes:

(1) formal examination of application documents, including whether or not the application contains the documents required by Article 26, and whether or not the form of those documents is obviously not in conformity with the provisions of Rule 16-19 or 23, or is in conformity with the provisions of Rule 2, 3, 26.2, 119 or 121;

(2) examination on obvious substantive defects in application documents, including whether or not the application obviously falls into the scope prescribed in Article 5 or 25, or is not in conformity with the provisions of Article 18, or 19.1 or 20.1, or is obviously not in conformity with the provisions of Article 2.2, 26.5, 31.1 or 33, or Rule 17 or 19;

(3) formal examination of other documents, including whether or not the other formalities and documents relating to the application are in conformity with the provisions of Articles 10, 24, 29, 30, and Rules 2, 3, 6, 7, 15.3, 15.4, 24, 30, 31.1-31.3, 32, 33, 36, 40, 42, 43, 45, 46, 86, 87 and 100; and

(4) examination of relevant fees, including whether or not the payments of the relevant fees of the application have been made in accordance with the provisions of Rules 93, 95, 96 and 99.

Art.75

2. Principles of Examination

In the procedure of preliminary examination, the examiner shall abide by the following principles of examination.

(1) Principle of confidentiality

In the patent application examination and approval proceedings, the examiner shall be obliged to keep secret the patent application documents and other contents related to patent application that are not published or announced, and other information that is not proper to be made known in accordance with the relevant provisions on secrecy.

(2) Principle of written examination

The examiner shall examine on the basis of the written documents submitted by the applicant. The Office Action (including the Notification to Make Rectification) and the result of examination shall be sent in written form to notify the applicant. In the preliminary examination procedure, in principle no interview will be held.

(3) Principle of hearing

Before making a decision of rejection, the examiner shall notify the applicant of the facts, grounds and evidence for rejection, and give the applicant at least one opportunity to make observations and/or amend the application documents. When the examiner makes a decision of rejection, the facts, grounds and evidence for rejection shall have been notified to the applicant, and the decision shall not contain any new facts, grounds and/or evidence.

(4) Principle of procedural economy

Where in conformity with the provisions, the examiner shall improve the efficiency of examination as much as possible, and shorten the examination period. With regard to the application with defects that can be eliminated through rectifications, the examiner shall conduct a comprehensive examination and do his best

to point out all the defects in one Notification to Make Rectification. The examiner may, on his own initiative, correct the obvious clerical mistakes and symbol mistakes in the documents of application for a patent, and, shall notify to the applicant. With regard to the application with substantive defects that can not be eliminated

through rectifications, the examiner may only point out the substantive defects in the Office Action without examining the formality defects in the application documents and other documents.

In addition to complying with the above principles, the examiner shall notify the applicant of subsequent procedures that can be initiated while making the decision that the application is deemed not to have been filed, the decision that the application is deemed withdrawn, or the decision of rejection.

3. Procedure of Examination

3.1 Passing Preliminary Examination

Upon preliminary examination, a patent application whose application documents are in conformity with the relevant provisions of the Patent Law and its Implementing Regulations and have no obvious substantive defects, including a patent application that has met the requirements of preliminary examination after rectification, shall be deemed to have passed the preliminary examination. The examiner shall issue the Notification of Passing Preliminary Examination and point out the text of the application on which the publication is based. Then the application enters into the publication procedure.

3.2 Rectification of Application Documents

During preliminary examination, for a patent application whose application documents have defects that can be eliminated through rectifications, the examiner shall conduct a comprehensive examination and issue the Notification to Make Rectification, in which the defects existing in the patent application shall be pointed out, the grounds shall be stated, and the time limit for response shall be specified. Where the defects still exist in the application documents after the applicant makes rectification, the examiner shall issue another Notification to Make Rectification.

3.3 Handling of Obvious Substantive Defects

During preliminary examination, for a patent application whose application documents have obvious substantive defects that can not be eliminated through rectifications, the examiner shall issue an Office Action, in which the substantive defects existing in the patent application shall be pointed out, the grounds shall be stated, and the time limit for response shall be specified. The substantive defects existing in the application documents shall be pointed out and handled only if the defects are obvious and affect the publication.

3.4 Response to Notification

The applicant shall, after receiving the Notification to Make

Rectification or the Office Action, make rectification or observations within the specified time limit. The applicant shall, when making rectification of the patent application, submit the rectification and the corresponding replacement sheets of the amended documents. The replacement sheets of the amended application documents shall be in duplicate, while only one copy is required for other documents. The amendment of the application documents shall eliminate the defects which have been pointed out in the Notification to Make Rectification, and shall not go beyond the scope of disclosure contained in the description and claims filed on the date of filing.

Where the applicant makes no response within the time limit, the examiner shall, depending on the circumstances, issue the Notification that Application Deemed to be Withdrawn or other notifications. Where it is difficult for the applicant to make response within the specified time limit due to justified reasons, he may request to extend the time limit. The provisions of Chapter 7, Section 4 of Part V of these Guidelines shall apply in handling the request for extension of the time limit.

Where a patent application is deemed to have been withdrawn resulting from failure to meet the time limit due to force majeure or other justified reasons, the applicant may, within the prescribed time limit, submit a request to the Patent Office for restoration of the right. The provisions of Chapter 7, Section 6 of

Part V of these Guidelines shall apply in handling the request for restoration of the right.

3.5 Rejection of Applications

Where obvious substantive defects exist in the application documents and remain unrectified after the applicant makes observations or amendment upon the examiner's issuance of the Office Action, or where formality defects exist in the application documents and remain unrectified after the applicant makes observations or rectification upon the examiner's issuance of the Notification to Make Rectification twice in respect of the said defects, the examiner may make a decision of rejection.

The text of the decision of rejection shall include three parts: brief of the case, grounds for rejection, and conclusion. The examination procedure of the rejected application shall be briefly

described in the part of brief of the case. The facts, grounds and evidence for rejection shall be explained in the part of grounds for rejection. The corresponding provisions of the Patent Law and its Implementing Regulations which the patent application is contravening shall be clearly indicated in the part of conclusion with a statement that the patent application is rejected in accordance with Rule 44.2.

3.6 Interlocutory Examination and Handling after Reexamination

Where the applicant is not satisfied with the decision of rejection, the applicant may, within the prescribed time limit, file a reexamination request with the Patent Reexamination Board. For

the interlocutory examination for the reexamination request and the handling after reexamination, the provisions of Chapter 8, Section 8 of Part II of these Guidelines shall apply.

Rules 44

4. Formal Examination of Application Documents

Art.26.2

4.1 Request

Rules 16

4.1.1 Title of Invention

The title of the invention in the request shall be identical with the one in the description. The title of the invention shall state briefly and accurately the claimed subject matter and category of the patent application for invention. The title of the invention shall not include non-technical terms, such as the name of an individual or entity, trademark, code or model, etc., nor shall it include any ambiguous terms, such as "and others", "and its like" etc. General terms shall not be used if they do not provide any information about the invention, for example, only such terms as "method", "equipment", "composition" and "compound" are used as the title of the invention.

In general, not more than 25 Chinese characters shall be used in the title of invention. In special circumstances, e.g., some inventions in the field of chemistry, the number of Chinese characters used in the title of invention can be up to 40 at most.

4.1.2 Inventor

As prescribed in Rule 13, the inventor shall be the person

who has made creative contributions to the substantive features of an invention-creation. However, the examiner does not examine whether or not the inventor whose name is filled in the request meets the requirements of the above provisions in the procedures of examination of the Patent Office.

The inventor shall be an individual, and an entity or organization shall not be filled in the request. For example, it shall not be filled in as "xx project group", etc. The inventor shall use his true name other than his pen name or other informal name.

Where there is more than one inventor, the names thereof shall be indicated in the order from left to right. Where the inventor filled in the request is not in conformity with the provisions, the examiner shall issue the Notification to Make Rectification. Where the applicant corrects the inventor's name filled in the request, he or it shall submit the rectification, the declaration of the party involved and the corresponding certifying document.

The inventor may request the Patent Office not to publish his name. Where such request is made when the patent application, "(do not publish the name)" shall be indicated after the corresponding inventor filled in the item of "inventor" in the request.

After the request for not publishing the inventor's name is made, if it is considered to be in conformity with the provisions, the Patent Office shall not publish the inventor's name in the Patent Gazette, the separate copy of the application for patent for invention application, separate copy of patent for invention and the certificate of patent, and shall indicate the phrase "request not to publish the name" in the corresponding position. The inventor shall not request his name to be published afterwards.

Where the request for not publishing the inventor's name is made after the patent application is filed, a written declaration signed or sealed by the inventor shall be submitted. However, if such request is made after the patent application enters into the procedure of preparation for publication, it shall be deemed not to have been made. The examiner shall issue the Notification that

Request Deemed Not to Have Been Submitted. A foreign inventor may use his initials in foreign language in the Chinese translation of his name. The initial of the first name shall be followed by a dot before the family name, such as M·Jones.

4.1.3 Applicant

4.1.3.1 Applicant Being Chinese Individual or Entity

For a service invention, the right to apply for a patent belongs to the entity for which the inventor serves. While for a non-service invention, the right to apply for a patent belongs to the inventor himself.

In general, it is not necessary for the examiner to examine the eligibility of the applicant filled in the request in the examination procedure of the Patent Office. Where the applicant is an individual, it may be presumed that the invention is a non-service invention, and the applicant has the right to file the patent application.

Where the examiner determines the eligibility of the applicant is obviously questionable according to the contents of the patent application, the applicant shall be notified to submit a proof of non-service invention provided by the entity for which the applicant serves. Where the applicant is an entity, it may be presumed that the invention is a service invention, and the entity has the right to file the patent application. Where the eligibility of the entity as an applicant is obviously questionable, for example, the applicant filled in the request is "the Scientific Research Division of xx University" or "xx Project Group of xx Research Institute", the examiner shall issue the Notification to Make Rectification and notify the applicant to submit a document certifying its eligibility as an applicant.

Where the applicant declares he is eligible and submits the certifying documents, he is considered to be eligible as an applicant. The proof provided by the competent department of a next higher level, and the copy of the certificate of the legal representative with the seal of the entity affixed on or the copy of the valid business license with the seal of the entity affixed on shall all be deemed to be valid certifying documents. Where the applicant filled in the request needs to be changed because of ineligibility, the changed applicant shall go through the formalities of rectification, submitting rectification and the declaration of changing applicant signed or sealed by both of the applicant before changing and the applicant after changing. Where the applicant is a Chinese entity or individual, its or his title or name, address, postal code, the code of the organization

or the citizen identification card number shall be stated in the request. Where the applicant is an individual, his true name, not his pen name or other informal name, shall be used. Where the applicant is an entity, its full official title, not its abbreviation or its shorter title, shall be used. The title of the entity filled in the request shall be the same as it appears in the official seal of that entity. Where the applicant filled in the request is not in conformity with the provisions, the examiner shall issue the Notification to Make Rectification. Where the applicant corrects its or his name or title stated in the request, the rectification, the declaration of the party involved and the corresponding certifying document shall be submitted.

4.1.3.2 Applicant Being Foreign Individual, Enterprise or Other Type of Organization

Article 18 provides that, where any foreign individual, enterprise or other type of organization having no habitual residence or business office in China files a patent application in China, the application shall be treated under the Patent Law in accordance with any agreement concluded between the country to which the applicant belongs and China, or in accordance with any international treaty to which both countries are party, or on the basis of the principle of reciprocity.

Where the applicant is a foreigner, a foreign enterprise or other foreign organization, his or its name or title, the nationality, or the country or region in which the applicant is registered shall be stated in the request. Where the examiner has any doubt about the nationality, or the registered place of the applicant filled in the request, he may invite the applicant to provide a certificate of nationality or document certifying the registered place in accordance with the provisions of Rule 33(1) or (2). Where the applicant states in the request that it has a business office in China, the examiner shall invite the applicant to submit a certifying document provided by the local administrative authority for industry and commerce. Where the applicant states that it has a habitual residence in China, the examiner shall invite the applicant to submit a document provided by the public security department, certifying that he is permitted to reside in China for one year or longer.

After it is affirmed that the applicant is a foreign individual, enterprise or other type of organization having no habitual residence or business office in China, the examiner shall examine whether or not the nationality or the registered place of the applicant, as filled in the request, is in conformity with one of the following three conditions:

(1) the country to which the applicant belongs has concluded with China an agreement affording patent protection to the nationals of each other;

(2) the country to which the applicant belongs is a country party to the Paris Convention for the Protection of Industrial Property (hereinafter referred to as the Paris Convention) or a member of the World Trade Organization; or

(3) the country to which the applicant belongs provides patent protection to foreign person on the basis of the principle of reciprocity.

Ru33(3)

The examiner shall start examination from whether or not the country to which the applicant belongs (where the applicant is an individual, it is determined by his nationality or habitual residence; where the applicant is an entity or other organization, it is determined by its registered place) is a country party to the Paris Convention or a member of the World Trade Organization. Generally, it is not necessary to examine whether or not there is any agreement, concluded between the relevant country and China, providing patent protection for the nationals of each other, because all of the countries which have concluded agreements with China are now parties to the Paris Convention or members of the World Trade Organization. Only when the country to which the applicant belongs is neither a country party to the Paris

Convention nor a member of the World Trade Organization, is it necessary to examine whether or not there are provisions in the law of that country giving patent protection to foreign person on the basis of principle of reciprocity. If there are no such written provisions giving patent protection to foreign person on the basis of the principle of reciprocity, the examiner shall invite the applicant to submit a document certifying that his or its country recognizes that Chinese citizens and entities are, under the same conditions as its own nationals, entitled to enjoy patent right and other related rights in that country. Where the applicant fails to submit such documents, the patent application shall be rejected in ac-

cordance with Rule 44 on the ground that it is not in conformity with the provisions of Article 18.

Where the applicant comes from the dependent territory of a country party to the Paris Convention, it shall be examined whether or not that country has declared that the Paris Convention is applicable to that territory.

Where the applicant is an individual, the initials in foreign language may be used in the Chinese translation of his name. The initial of the first name shall be followed by a dot before the family name, such as M·Jones. Titles used to show any academic degree, occupation, etc., for example "Dr.", "Prof.", shall not be used in the applicant's name. Where the applicant is an entity or any other organization, it shall use its full name of the official Chinese translation. It is permitted to use certain title that indicates the status of independent legal person in accordance with the laws of the country to which the applicant belongs.

4.1.3.3 Application Being Filed Jointly by Chinese and Foreign Applicants

Where a patent application is filed jointly by a Chinese applicant and a foreign applicant, Section 4.1.3.1 of this Chapter shall apply to the Chinese applicant, while Section 4.1.3.2 of this Chapter shall apply to the foreign applicant.

Rule 4.2

4.1.4 Contact Person

Where an applicant is an entity and it has not appointed a patent agency, the contact person shall be indicated. The contact person refers to one who receives correspondence from the Patent Office for the applicant. The contact person shall be a staff of the entity. The examiner may invite the applicant to submit certifications if necessary. Where the individual applicant needs another person, instead of himself, to receive correspondence from the Patent Office, the contact person may also be indicated. Only one person shall be indicated as the contact person. The address, postcode and telephone number of the contact person shall also be indicated.

Rules 15.4

4.1.5 Representative

Where there are two or more applicants and no patent agency

is appointed,except for where otherwise provided for in the Guidelines,or unless otherwise stated in the request,the first named applicant shall be the representative. Where it is otherwise stated in the request,the stated representative must be one of the applicants. Except for the formalities directly relating to the joint rights,the representative can represent all the applicants to go through other formalities in the Patent Office. The formalities directly relating to the joint rights include filing the patent application,appointing a patent agency,assigning the right to apply for patent,the right of priority or the patent right,withdrawing the patent application,withdrawing the claim for the right of priority,abandoning the patent right,etc. The formalities directly relating to the joint rights shall be signed or sealed by all the owners of the rights.

Art.19

Rule 16(4)

4.1.6 Patent Agency and Patent Agent

Any patent agency shall be established in accordance with the provisions of the Regulations Governing Patent Agency and approved by the State Intellectual Property Office.

Any patent agency shall use the full name which has been registered with the State Intellectual Property Office,and which shall be the same as that appearing in the official seal of that patent agency which is affixed on the application documents. Any abbreviation or initials shall not be used. The agency's organizational code given by the State Intellectual Property Office shall also be indicated in the request.

The term "patent agent" refers to a person who holds a Patent

Agent Qualification Certificate,practices in a legitimate patent agency and has acquired a professional certificate of Patent Agent from the State Intellectual Property Office. The patent agent shall use his true name and fill the professional certificate number and the telephone number in the request. The applicant shall not appoint more than two patent agents for one patent application.

Art.26.2

Rule 16

4.1.7 Address

The address(including the address of the applicant,patent agency or contact person)in the request shall meet the requirements for quick and accurate delivery by post. The domestic address shall include the postcode,the names of the province (autonomous

region),municipality (autonomous prefecture),district, street,the number of the house,and the telephone number, or the names of the province (autonomous region),county (autonomous county),town (township),street,the number of the house,and the telephone number,or the names of the municipality directly under the Central Government,district,street,the number of the house,and the telephone number. Where a postbox is available,it may be used in accordance with the stipulations.

The name of an entity may be included in the address,but it cannot be used to replace the address. For example,only "xx University of xx Province" shall not be used as an address. Where the address is in a foreign country,the names of the country and city (county,state)shall be clearly indicated,and the detailed address in foreign language shall be appended.

Art.26.3
Rule 17

4.2 Description

The first line on page one of the description shall state the title of the invention,which shall be the same as that appearing in the request and shall be located in the middle of the line. No such words as "Title of Invention" or "Title" shall be used before the title of the invention. A blank line shall be left between the title of invention and the text of the description.

The description shall contain the following parts,and each shall bear the headings respectively as follows:

Technical Field;

Background Art;

Contents of Invention;

Description of Figures;

Specific Mode for Carrying out the Invention.

Where there are no drawings in the description,the part of "Description of Figures" and the corresponding heading shall be omitted.

As for an application relating to nucleotide or amino acid sequence,such sequence listing shall be a separate part of the description and its pages shall be numbered separately from the description. The applicant shall at the time of filing submit a copy of computer-readable form which is in agreement with the sequence listing,such as a CD-ROM or floppy disc recording the above sequence listing and meeting the relevant prescriptions.

Where the sequence listing recorded in the CD-ROM or floppy disc is not in agreement with the sequence listing stated in the description, the sequence listing stated in the description shall prevail. Where no such copy of computer-readable form has been submitted or the submitted copy is obviously not in conformity with the sequence listing stated in the description, the examiner shall issue the Notification to Make Rectification and invite the applicant to submit a corrected copy within the specified time limit. If the applicant fails to submit it within the specified time limit, the examiner shall issue the Notification that Application Deemed to be Withdrawn.

The text of the description may contain chemical, mathematical formulas, or tables, but drawings shall not be included.

Where there is description of figures in the text of the description, there shall be drawings in accordance with description. Where there are drawings, there shall be description to such figures in the text of the description.

Rule 40

Where the description states that it contains explanatory notes to the drawings but the drawings or part of them are missing, the applicant shall be invited, within the specified time limit, either to make a declaration for the deletion of the explanatory notes to the drawings or to furnish the corresponding drawings. If the applicant submits the drawings later, the date of their delivery at or mailing to the Patent Office shall be the date of filing of the application; and the examiner shall issue the Notification of Redetermination of Filing Date. If the explanatory notes to the drawings are to be deleted, the initial date of filing shall be retained.

Rule 121.2

The pages of the description shall be numbered consecutively in Arabic numerals.

Rules 18 & 121

4.3 Drawings

The drawings shall be executed in black ink with the aid of drafting instruments including computer. The lines shall be uniformly thick and well defined, dark enough, and free from color and alterations. Engineering blueprint drawings shall not be used.

The oblique hatching of cross-sections shall not impede the clear reading of the reference signs and leading lines.

The same sheet of paper may contain several figures. A single complete figure may be split over several different sheets, but the figures on each sheet must be independent, and shall be so arranged that when all the figures are assembled to form a single complete figure, it would not affect the clarity of the various figures. No frame line irrelevant to the figures shall be used around the figures. Where there are two or more figures, they shall be numbered consecutively in Arabic numerals, and the word "Figure" shall be added before the number, for example, "Figure 1", "Figure 2". The number shall be labeled right below the corresponding figures.

Figures shall be preferably arranged in an upright position on a sheet or sheets, clearly separated from one another. Where it is necessary to arrange the figure not in an upright position because the dimension of the horizontal section of the part is obviously larger than that of the vertical section, it shall be presented sideways with the top of the figure at the left side of the sheet. Where there are two or more figures on one sheet and one of them is presented in that way, the rest of the figures shall be presented in the same way.

Reference signs shall be numbered in Arabic numerals. Reference signs that are not mentioned in the text of the description shall not appear in the figures, and reference signs that do not appear in the figures shall not be mentioned in the text of the description. The reference signs for the same composite parts shall be identical throughout the application documents.

The size and distinctness of the figure shall ensure that each detail of the figure shall be clearly distinguishable when the figure size is reduced to two-thirds so as to meet the requirements of copying and scanning process.

The identical scale shall be adopted in the same figure. An additional figure of partial enlargement may be added in order to make certain part of the figure be shown distinctively. Explanatory words are prohibited in the figure except a single word or words that are indispensable. Such word or words shall be in Chinese, and its original language may be added in brackets where necessary.

Flow charts and diagrams shall be considered as drawings, and indispensable notes and symbols shall be included in its

frame. Generally, photographs shall not be used as drawings, however, under special circumstances, for example, when a metallographic structure, histocyte, or electrophoresis pattern is to be shown, photographs may be used as drawings and they may be pasted on the sheet of drawings.

All the pages of the drawings of description shall be numbered consecutively in Arabic numerals.

Rule 19.2

4.4 Claims

Where there are several claims, they shall be numbered consecutively in Arabic numerals. No words such as "claim", "item" shall be used before the numerals.

The claims may contain chemical or mathematical formulas, and tables if necessary, but shall not include drawings.

All the pages of the claims shall be numbered consecutively in Arabic numerals.

Art.26.1

Rule 23

4.5 Abstract

Where a patent application for invention is filed, an abstract of the description (hereinafter referred to as the abstract) shall be submitted.

4.5.1 Text of the Abstract

The text of abstract shall state the title of the invention and the technical field to which the invention pertains. It shall be drafted in a way which allows the clear understanding of the technical problem, the gist of the technical solution of that problem, and the principal use or uses of the invention. Where no title of invention is given or no gist of the technical solution is stated, the applicant shall be invited to make rectifications. Where words of commercial advertising are included, the examiner may delete them or invite the applicant to delete them. Where the words are deleted by the examiner, the applicant shall be notified accordingly.

The title shall not be taken as heading in the text of the abstract. The text of the abstract shall contain not more than 300 Chinese characters (including punctuation). Where there are more than 300 Chinese characters, the examiner may make abridgements, or invite the applicant to make abridgements. Where the

abridgement is made by the examiner, the applicant shall be notified accordingly.

4.5.2 Figure Accompanying the Abstract

Where the description contains drawings, the applicant shall submit one figure which best characterizes the technical features of the invention as the figure accompanying the abstract. The figure accompanying the abstract shall be one of the drawings of the description. Where the applicant has not submitted such a figure, the examiner may invite the applicant to make rectifications, or may designate one ex officio and notify the applicant accordingly. Where the examiner considers that there is no suitable figure to be designated, he may not invite the applicant to make rectifications.

Where the figure accompanying the abstract submitted by the applicant obviously cannot characterize the main technical features of the invention or it is not one of the drawings in the description, the examiner may invite the applicant to make rectifications, or designate another one ex officio and notify the applicant accordingly.

The scale and the distinctness of the figure accompanying the abstract shall be as such that a reproduction with a linear reduction in size to 4cm×6cm would still enable all details to be clearly distinguished.

The abstract may contain chemical formula which best characterizes the invention. Such chemical formula may be deemed as the figure accompanying the abstract.

Rule 121

4.6 Format Examination of Application Documents for Publication

When a patent application is published, the text of the description, claims and abstract shall be neat and legible, free from alteration and obliteration, without any character or word added between the lines. The lines of the drawings of the description and the figure of the abstract (including the outlines, dotted lines, section lines, central lines, indicative lines, etc.) shall be legible and discernible. Both characters and lines shall be in sufficiently black, and kept in a clean background so as to meet the requirements of copying and scanning process. The text and drawings shall have no frame around them. The sheets of each part of the documents shall be numbered in order respectively.

Where the application documents are not in conformity with the above requirements, the examiner shall issue the Notification to Make Rectification to notify the applicant to make rectifications. Where no rectification is made within the time limit, the examiner shall issue the Notification that Application Deemed to be Withdrawn.

Rule 42.1

5. Preliminary Examination of Special Patent Applications

5.1 Divisional Application

5.1.1 Examination of Divisional Application

Where a patent application contains two or more inventions, the applicant may submit a divisional application on his own initiative or in accordance with the Office Action of the examiner. A divisional application shall be submitted on the basis of the initial application (first filed application). The category of a divisional application shall be the same as that of the initial application. The application number and the filing date of the initial application shall be indicated in the request for the divisional application. Where the applicant files another divisional application based on an already filed divisional application, the application number of the already filed divisional application shall be filled in the parenthesis after the application number of the initial application.

For a divisional application, besides examining the application documents and other documents as prescribed, the examiner shall examine the following matters on the basis of the initial application:

(1) The filing date of the initial application indicated in the request

The filing date of the initial application shall be indicated in the request correctly. If it is not correct, the examiner shall issue the Notification to Make Rectification to the applicant for rectifications. Where no rectification is made within the time limit, the examiner shall issue the Notification that Application Deemed to be Withdrawn. If the rectification is in conformity with the provisions, the examiner shall issue the Notification of Redetermination of Filing Date.

(2) The application number of the initial application indicated

in the request

The application number of the initial application shall be indicated in the request correctly. Where the initial application is an international application, the applicant shall indicate the application number of the international application in the brackets that follow the initial application number filled in the request. Where the application documents are not in conformity with the requirements, the examiner shall issue the Notification to Make Rectification, and invite the applicant to make rectification. Where no rectification is made within the time limit, the examiner shall issue the Notification that Application Deemed to be Withdrawn.

(3) Submission time of divisional application

The applicant shall file a divisional application no later than the expiration of two months (i.e., the time limit for going through the formalities of registration) from the date of receiving the Notification to Grant Patent Right to the initial application issued by the Patent Office. After the expiration of the above time limit, or where the initial application has been rejected, or the initial application has been withdrawn, or is deemed to have been withdrawn and the right has not been restored, no divisional application shall be filed in general.

With regard to the initial application to which the examiner has issued the decision of rejection, the applicant may file a divisional application within three months from the date that the applicant receives the decision of rejection regardless of whether the applicant requests for reexamination or not. The applicant, after requesting for reexamination or during the initiation of the administrative litigation against the reexamination decision, may also file a divisional application.

During the preliminary examination, where the filing date of a divisional application is not in conformity with the said provisions, the examiner shall issue the Notification that Divisional Application Deemed Not to Have Been Filed, and make a decision to close the case.

Where an applicant files another divisional application based on an already filed divisional application, the submission date of another divisional application shall be examined according to the initial application. Where the submission date of another di-

visional application is not in conformity with the above provisions, no divisional application shall be filed, however, with the exception that another divisional application is filed by the applicant according to the Office Action made by the examiner due to a unity defect in the divisional application. Regarding this exception, the applicant, when filing another divisional application, shall submit a copy of the Office Action indicating the unity defect or of the Notification to Make Divisional Application issued by the examiner. Where the copy of the Office Action or of the Notification to Make Divisional Application in conformity with the provisions is not submitted, the application shall not be treated as exception. Where the copy is not in conformity with the provisions, the examiner shall issue the Notification to Make Rectification notifying the applicant to make rectification. Where no rectification is made within the time limit, the examiner shall issue the Notification that Application Deemed to be Withdrawn. Where the copy is still not in conformity with the provisions after rectification, the examiner shall issue the Notification that Divisional Application Deemed Not to Have Been filed and make a decision to close the case.

(4) Applicant and inventor of divisional application

The applicant of a divisional application shall be the same as that of the initial application. Where this is not the case, a document certifying the change of the applicant shall be submitted. The inventor of a divisional application shall be the inventor or part of the inventors of the initial application. Where there is any inconformity with the provisions, the examiner shall issue the Notification to Make Rectification notifying the applicant to make rectification. Where no rectification is made within the time limit, the examiner shall issue the Notification that Application Deemed to be Withdrawn.

(5) Submitted documents of divisional application

Besides the application documents, a copy of the application documents of the initial application and a copy of other documents relevant to the divisional application in the initial application (such as copy of the priority document) shall also be submitted. With regard to the various certifying materials that have been submitted with the initial application, duplicate copies may be used. Where the international publication of the initial application

is in a language other than Chinese, a copy of such international publication shall be submitted together with a Chinese copy of the initial application. Where any inconformity with the provisions exists, the examiner shall issue the Notification to Make Rectification to the applicant for rectification. Where no rectification is made within the time limit, the examiner shall issue the *Notification that Application Deemed to be Withdrawn*.

5.1.2 Time Limit and Fees of Divisional Application

The various prescribed time limits applicable for a divisional application, such as the time limit for submitting the request for substantive examination, shall be calculated from the initial date of filing. Where the various time limits have expired, or are less than two months from the submission date of the divisional application to the date of expiration, when the divisional application is submitted, the applicant may go through the various formalities within two months from the submission date of the divisional application, or within fifteen days from the date of receipt the Notification of Acceptance. Where the applicant fails to go through any of the formalities within the time limit, the examiner shall issue the Notification that Application Deemed to be Withdrawn.

The applicant shall pay all the same fees for a divisional application as he shall pay for a new application. Where the time limits for paying the various fees have expired, or are less than two months from the submission date of the divisional application to the date of expiration, the applicant shall pay the fees within two months from the submission date of the divisional application, or within fifteen days from the date of receipt the Notification of Acceptance. If the fees are not paid or not paid in full within the time limit, the examiner shall issue the Notification that Application Deemed to be Withdrawn.

Rule 24

5.2 Application Relating to Biological Material

5.2.1 Examination of Application Relating to Biological Material

For an application relating to biological material, the applicant shall, in addition to the other requirements provided for in the Patent Law and its Implementing Regulations, go through the following formalities:

(1) depositing a sample of the biological material with a depositary institution designated by the State Intellectual Property Office before the date of filing, or, at the latest, on the date of filing (or the priority date where priority is claimed);

(2) stating, in the request and the description, the name and address of the depositary institution with which the sample of biological material was deposited, the date on which the sample was deposited, the accession number of the deposit, and the scientific name of the biological material (with its Latin name);

(3) giving in the application document relevant information of the characteristics of the biological material; and

(4) submitting, within four months from the date of filing, a certificate of deposit and a certificate of viability of the biological material issued by the depositary institution.

In preliminary examination, where the applicant submits a certificate of deposit within the prescribed time limit, the examiner shall examine the following matters on the basis of the certificate:

(1) Depositary institution

The depositary institution shall be an international depositary institution designated by the State Intellectual Property Office for the deposit of the biological material samples. If this provision is not complied with, the examiner shall issue the Notification that Biological Material Sample Deemed Not to Have Been Deposited.

(2) Date of deposit

The date of deposit shall be before or on the date of filing (or the priority date where priority is claimed). If this provision is not complied with, the examiner shall issue the Notification that Biological Material Sample Deemed Not to Have Been Deposited.

However, where the date of deposit indicated in the certificate of deposit is after the date of priority claimed and before the filing date, the examiner shall issue the Notification to Rectify Formalities, and invite the applicant to withdraw the claim for priority or to declare that the priority of the contents of the biological material concerned in the certificate of deposit will not be claimed within the specified time limit. If the applicant fails to make any response within the time limit or the correction is not in conformity with the provisions, the examiner shall issue the

Notification that Biological Material Sample Deemed Not to Have Been Deposited.

(3) Consistency between the certificate of deposit, certificate of viability and the request

The certificate of deposit and certificate of viability shall be consistent with the items appearing in the request. Where there are any inconsistencies, the examiner shall issue the Notification to Make Rectification inviting the applicant to make rectifications within the specified time limit. If the applicant fails to make rectifications within the time limit, the examiner shall issue the Notification that Biological Material Sample Deemed Not to Have Been Deposited.

In preliminary examination, where the applicant fails to submit the certificate of deposit within the prescribed time limit, the sample of the biological material shall be deemed not to have been deposited, and the examiner shall issue the Notification that Biological Material Sample Deemed Not to Have Been Deposited. Where, within four months from the date of filing, the applicant fails to submit the certificate of viability of the biological material sample, and fails to give justified reasons for its omission, the sample of the biological material will be deemed not to have been deposited, and the examiner shall issue the Notification that Biological Material Sample Deemed Not to Have Been Deposited.

Where the sample of the biological material ceases to be viable in the course of the transmittal of the sample to the depositary institution, the sample of the biological material will be deemed not to have been deposited, and the examiner shall issue the notification that Biological Material Sample Deemed Not to Have Been Deposited, unless the applicant proves that he is not responsible for the loss of viability of the sample of the biological material. Where the applicant submits such evidence, he may make a new deposit of the sample of the biological material that is identical with the original one within four months from the date of filing, and the initial date of deposit shall be the date of deposit.

The applicant of a patent application relating to biological material shall, in the request and the description, indicate the scientific name of the biological material, the name and address of

the depositary institution in which the sample of biological material is deposited, the date and the accession number of the deposit, all of which shall be consistent with each other (see Chapter 10, Section 9.2.1 of Part II of these Guidelines). Where, at the time of filing, they are not indicated in the request and the description, the applicant shall make rectification within four months from the date of filing. If the applicant fails to make rectification within the time limit, the sample of the biological material shall be deemed not to have been deposited. If the indication in the request is not consistent with that in the description, the applicant may make rectification within the specified time limit after receiving the notification of the Patent Office. If no rectification is made within the time limit, the biological material sample shall be deemed not to have been deposited.

5.2.2 Restoration of Deposit

After the examiner issues the Notification that Biological Material Sample Deemed Not to Have Been Deposited, if the applicant has any justified reason for objection, the applicant may request the Patent Office to restore his right in accordance with Rule 6.2. Except for other ones, the justified reasons in respect of the deposit of the sample of the biological material or the viability of the sample include the following:

(1) it is the depositary institution that fails to furnish the certificate of deposit or the certificate of viability of the biological material sample within four months from the date of filing, and it has furnished documents certifying this; and

(2) the sample of the biological material ceases to be viable in the course of the transmittal of the sample, for which the applicant can provide evidence to prove he is not responsible.

Art.26.5
Rule 26.2

5.3 Application Relating to Genetic Resources

Where an application for patent is filed for an invention-creation which is developed on the basis of genetic resources, the applicant shall state the source of said genetic resources in the request, and fill in the Registration Form for Indicating Source of Genetic Resources, indicating the direct source and original source of such genetic resources. Where the applicant fails to state the original source, he or it shall state the reasons thereof. Where the

application is not in conformity with the provisions, the examiner shall issue the Notification to Make Rectification, inviting the applicant to make rectification. Where no response is made within the time limit, the examiner shall issue the Notification that Application Deemed to be Withdrawn. Where the application is still not in conformity with the provisions after rectification, the application shall be rejected.

6. Examination of Other Documents and Relevant Formalities

6.1 Appointment of Patent Agency

Rule 44

6.1.1 Appointment

Article 19.1 provides that where any foreign individual, enterprise or other type of organization having no habitual residence or business office in mainland China applies for a patent, or has other patent matters to attend to, in China, or the applicant, as the first named applicant in a patent application jointly with an applicant from mainland China, applies for a patent and has other patent matters to attend to, he or it shall appoint a patent agency to act as his or its agent. In the examination of the application, if it is found that such an applicant has not appointed a patent agency, the examiner shall issue the Office Action to notify the applicant to respond within the specified time limit. If the applicant fails to make any response within the specified time limit, the application shall be deemed to have been withdrawn. Where, after the applicant has made his observations or rectifications, the application is still not in conformity with the provisions of Article 19.1, the application shall be rejected.

Any entity or individual in mainland China may appoint a patent agency to apply for a patent and to attend to other patent matters in the country. Where the appointment is not in conformity with the provisions, the examiner shall issue the Notification to Make Rectification, and invite the patent agency to make rectification within the specified time limit. Where the patent agency fails to make any response within the time limit, or where the rectification is still not in conformity with the provisions after rectification, the examiner shall issue the Notification that Patent Agency Deemed Not to Have Been Appointed to both the applicant

and the appointed patent agency.

Where any applicant of Hong Kong, Macao, or Taiwan having no habitual residence or business office in mainland China applies for a patent or has other patent matters to attend to before the Patent Office, or the applicant, as the first applicant in a patent application jointly with an applicant from mainland China, applies for a patent and has other patent matters to attend to, he or it shall appoint a patent agency to act as his or its agent. Where no patent agency is appointed, the examiner shall issue the Office Action notifying the applicant to respond within the specified time limit. If the applicant fails to make any response within the specified time limit, the application shall be deemed to have been withdrawn. Where, after the applicant has made his observations or rectifications, the application is still not in conformity with the provisions, the application shall be rejected.

The parties to the appointment are the applicant and the appointed patent agency. Where there are two or more applicants, the parties are all of the applicants and the appointed patent agency. Only one patent agency shall be appointed, except otherwise prescribed in these Guidelines. After accepting the appointment, the patent agency shall designate its patent agents to handle the relevant matters. The said agents so designated shall not be more than two persons.

Rule 15.3

6.1.2 Power of Attorney

Any applicant who appoints a patent agency for applying for a patent, or for having other patent matters to attend to before the Patent Office, shall submit a power of attorney. The power of attorney shall be in the unified form prescribed by the Patent Office, and shall indicate the scope of the authorized power, the title of the invention-creation, the names of the patent agency and the patent agent, which shall be the same as that appearing in the request. Where the power of attorney is submitted after the application number of the application is accorded, the application number shall also be indicated.

The power of attorney shall be signed or sealed by the applicant if the applicant is an individual. Where the applicant is an entity, the power of attorney shall be sealed by the entity, and may also be signed or sealed by its legal representative. Where

there are two or more applicants,the power of attorney shall be signed or sealed by all of the applicants. In addition,the official seal of the patent agency shall be affixed on the power of attorney.

Where any applicant appoints a patent agency,a general power of attorney may be deposited with the Patent Office. Where a due general power of attorney is received,the Patent Office shall accord a number to it and notify the patent agency accordingly. After a general power of attorney has been deposited, when filing a patent application,the applicant may submit a copy of the general power of attorney instead of the original,and indicate the title of the invention-creation,names of the patent agency and the patent agent,and the number of that general power of attorney accorded by the Patent Office. The official seal of the patent agency shall be affixed.

Where the power of attorney is not in conformity with the requirements,the examiner shall issue the Notification to Make Rectification inviting the patent agency to make rectifications within the specified time limit. Where the first applicant is an entity or individual of mainland China,and no response is made within the time limit or the rectification made by the applicant is still not in conformity with the requirements,the examiner shall issue the Notification that Patent Agency Deemed Not to Have Been Appointed to both parties. Where the first applicant is a foreign individual,foreign enterprise or other type of organization, if no response is made within the time limit,the examiner shall issue the Notification that Application Deemed to be Withdrawn. If the requirements are still not met after rectification, the patent application shall be rejected. Where the first applicant is an individual,enterprise or other organization of Hong Kong,Macao or Taiwan,if no response is made within the time limit,the examiner shall issue the Notification that Application Deemed to be Withdrawn. If the requirements are still not met after rectification,the patent application shall be rejected.

6.1.3 Dissolution of Appointment and Resignation of Appointment

After the applicant (or patentee)appoints a patent agency,he may dissolve the appointment. After the patent agency accepts the applicant's (or patentee's)appointment,it may resign from the appointment as well. The provisions of section 6.7.2.4 of

this chapter shall apply for the formalities of going through the dissolution or resignation of appointment.

6.2 Claiming Right of Priority

Claiming the right of priority means that the applicant claims in an application filed with the Patent Office to enjoy a right of priority on the basis of one or more previous filed applications in accordance with Article 29. Claiming the right of priority shall be in conformity with the provisions of Articles 29 and 30, Rules 31 and 32, and the relevant provisions of the Paris Convention.

Art.29.1

Where an applicant files an application in China within twelve months from the date of filing his first application for invention or utility model of the same subject matter in a foreign country or within six months from the date of filing his first application for design of the same subject matter in a foreign country, he may enjoy the right of priority in accordance with the agreement concluded between that country and China or international treaties to which both countries are parties, or under the principle of reciprocity on priority. Such right of priority is called foreign priority.

Art.29.2

Where the applicant, within twelve months from the date of filing his first application for invention or utility model of the same subject matter in China, files an application for invention or utility model on the basis of the first filed application for invention, or files an application for utility model or invention on the basis of the first filed application for utility model with the Patent Office, he may enjoy the right of priority. Such priority is called domestic priority.

6.2.1 Claiming Foreign Priority

Art.29.1

6.2.1.1 Previous Application and Subsequent Application Claiming Priority

Where any applicant files a patent application which contains a declaration claiming the priority of a previous application filed in a foreign country, the examiner shall examine whether or not the previous application, as the basis of the right of priority, was filed in any country party to the Paris Convention, or is a region application or an international application which is valid in

that country party to the Convention. If the application was filed in a country which is not party to the Paris Convention, the examiner shall examine whether or not that country recognizes the right of priority of China on the basis of the principle of reciprocity. The examiner shall also examine whether or not the applicant claiming the priority is entitled to the rights accorded under the Paris Convention, i.e., whether or not he is a national or resident of a country party to the Convention, or examine whether or not the applicant is a national or resident of a country recognizing the right of priority of China on the basis of the principle of reciprocity.

Furthermore, the examiner shall examine whether or not the subsequent application claiming priority is filed within the prescribed time limit. If this requirement is not complied with, the examiner shall issue the Notification that Claim to Priority Deemed Not to Have Been Made. Where there are two or more previous applications, the priority period shall be calculated from the date of filing of the first application. Where a certain subsequent application is filed later than the specified time limit, the examiner shall issue the Notification that Claim to Priority Deemed Not to Have Been Made regarding the declaration of claiming priority made later than the time limit.

In the course of the preliminary examination, the examiner shall not examine whether or not the previous application is the first application defined by the Paris Convention, and whether or not the subject matter of the subsequent application is identical with that of the previous application, unless the first application is obviously not in conformity with the relevant provisions of the Paris Convention, or the subject matter of the subsequent application is obviously not related with that of the previous application.

The previous application may be an application for inventor's certificate defined in Article 4 of the Paris Convention.

Art.30

Rules 16(5)&31.2

6.2.1.2 Declaration of Claiming Priority

Where any applicant claims the right of priority, he shall make a declaration in the request when the patent application is filed. If the applicant fails to do so, the claim to the right of priority shall be deemed not to have been made.

The applicant shall, in his declaration, indicate the filing date

and the application number of the previous application, which is the basis of the right of priority, and the name of the authority with which the application was first filed. Where one or two items of the date of filing, the filing application number of the earlier application and the name of the authority with which the application was first filed are missing or incorrect in the request, and the applicant has submitted a copy of the previous application document within the prescribed time limit, the examiner shall issue the Notification to Rectify Formalities. If the applicant fails to make any response within the time limit or the requirements are not met after rectification, the examiner shall issue the Notification that Claim to Priority Deemed Not to Have Been Made.

Where more priorities are claimed, but one or two items of the date of filing, the filing application number of the earlier application and the name of the authority with which the application was first filed are missing or incorrect in the request, and the applicant has submitted copies of the previous applications documents within the prescribed time limit, the examiner shall issue the Notification to Rectify Formalities. If the applicant fails to make any response within the time limit or the requirements are still not met after rectification, the priority shall be deemed not to have been made, and the examiner shall issue the Notification that Claim to Priority Deemed Not to Have Been Made.

6.2.1.3 Copy of Previous Application Documents

Rule 31.1

The copy of the previous application document, which is the basis of the right of priority, shall be provided by the authority with which the previous application was filed. The formality of the copy of the said application document shall be in conformity with the international practice. At least, the name of the authority with which the application was filed, the name of the applicant, the date of filing and the application number shall be indicated. Where the application is not in conformity with those requirements, the examiner shall issue the Notification to Rectify Formalities. If the applicant fails to make any response within the time limit, or if the rectification is not in conformity with the said requirements, it shall be deemed that no copy of the previous application document has been submitted, and the examiner

shall issue the Notification that Claim to Priority Deemed Not to Have Been Made.

Where multiple priorities are claimed, the copies of all the relevant previous application documents shall be submitted. If this requirement is not met, the examiner shall issue the Notification to Rectify Formalities. If the applicant fails to make any response within the specified time limit or if the rectification is not in conformity with the requirements, it shall be deemed that copies of the previous application documents have not been submitted, and the examiner shall issue the Notification that Claim to Priority Deemed Not to Have Been Made regarding the declaration claiming that right of priority of which the copy of the previous application documents does not meet the requirements.

The copy of the previous application document shall be submitted within three months from the filing date of the subsequent application. If the said copy has not been submitted within the time limit, the examiner shall issue the Notification that Claim to Priority Deemed Not to Have Been Made.

Where, in accordance with the agreement between the State Intellectual Property Office and the said authority with which the previous application was filed, the Patent Office obtains a copy of the earlier application documents through electronic transmission or in any other manners, the copy of the earlier application documents certified by the authority shall be deemed to have been submitted by the applicant.

Where the copy of the previous application document which has been submitted to the Patent Office is required to be submitted again, the Chinese translation of the extract may be submitted instead, and indicates the application number of the subsequent application in the file of which the certified copy of the previous application document is deposited.

6.2.1.4 Applicant of Subsequent Application

The applicant(s) of the subsequent application claiming the right of priority shall be the same as the applicant, or at least one of the applicants recorded in the certified copy of the previous application document.

Where the applicants of the two applications are entirely different, and the right of priority of the previous application has been assigned to the applicant of the subsequent application, a document certifying the assignment of the right of priority, signed or sealed by all of the applicants of the previous application, shall be submitted within three months from the filing date of the subsequent application. Where the previous application has several applicants and the subsequent application has several different applicants, a document certifying the assignment of the right of priority, signed or sealed by all of the applicants of the previous application, to all of the applicants of the subsequent application may be submitted; or a document certifying the assignment of the right of priority, signed or sealed respectively by all of the applicants of the previous application, to the applicants of the subsequent application may be submitted.

Where the applicant fails to submit a document certifying the assignment of the right of priority within the time limit or where the certifying document submitted is not in conformity with the requirements, the examiner shall issue the Notification that Claim to Priority Deemed Not to Have Been Made.

6.2.2 Claiming Domestic Priority**6.2.2.1 Previous Application and Subsequent Application Claiming Priority**

The previous application and the subsequent application claiming priority shall meet the following requirements:

(1) the previous application shall be a patent application for invention or for utility model, and it shall not be a divisional application, nor shall it be a patent application for design;

(2) no foreign or domestic priority has been claimed for the subject matter of the previous application, or though the foreign or domestic priority has been claimed, it does not enjoy the priority;

(3)no patent right has been granted for the subject matter of the previous application; and

(4)the subsequent application which claims the right of priority has been submitted within twelve months from the filing date of the previous application.

When the requirement referred to above in item (3)is examined, the reference time shall be the filing date of the subsequent application claiming priority. When the requirement referred to above in item (4)is examined,where multiple priorities are claimed,the reference time shall be the filing date of the earliest application,i.e.,the subsequent application claiming priority shall be filed within twelve months from the filing date of the earliest application.

Where any one of the above requirements is not complied with,the examiner shall,regarding the declaration claiming priority which is not in conformity with the requirements,issue the Notification that Claim to Priority Deemed Not to Have Been Made.

When the claim to the right of priority is examined,if it is found that the Notification to Grant Patent Right and the Notification to Go through Formalities of Registration of the previous application have been sent out by the Patent Office and the applicant has gone through formalities of registration,the examiner shall issue the Notification that Claim to Priority Deemed Not to Have Been Made to the subsequent application. In the course of the preliminary examination,the examiner shall only examine whether or not the subject matter of the subsequent application is obviously not related to that of the previous application,and the examiner shall not examine whether or not the subject matter of the previous application and that of the subsequent application are identical in substance. Where the subject matter of the previous application and that of the subsequent application are obviously not related with each other,the examiner shall issue the *Notification that Claim to Priority Deemed Not to Have Been Made*.

Art.30

6.2.2.2 Declaration of Claiming Priority

Rules 16(5) & 31.2

Any applicant who claims the right of priority shall make a declaration in the request when the application is filed. If the applicant

fails to do so, the claim to the right of priority shall be deemed not to have been made.

The applicant shall indicate the date of filing, the application number of the previous application, which is the basis of the right of priority, and the name of the authority with which the previous application was filed (in this case, China) in the declaration claiming the priority. If the applicant fails to indicate or indicates wrongly one or two items of those matters, the examiner shall issue the Notification to Rectify Formalities, if the applicant fails to make any response within the time limit, or if the rectification is still not in conformity with the requirements, the examiner shall issue the Notification that Claim to Priority Deemed Not to Have Been Made.

Where multiple priorities are claimed, if one of the written declaration fails to indicate or wrongly indicates one or two items of the filing date, application number, or the name of the authority with which the previous application was filed of the previous application, the examiner shall issue the Notification to Rectify Formalities, if the applicant fails to make any response within the time limit, or if the rectification is still not in conformity with the requirements, the claim to the right of priority shall be deemed not to have been made, and the examiner shall issue the Notification that Claim to Priority Deemed Not to Have Been Made.

Rules 31.1

6.2.2.3 Copy of Previous Application Documents

The copy of the previous application document shall be prepared by the Patent Office in accordance with the provisions.

Where the right of domestic priority is claimed, if the date of filing and the application number of the previous application are indicated in the request by the applicant, the copy of the previous application documents shall be deemed to have been submitted.

Rules 31.3

6.2.2.4 Applicant of Subsequent Application

The applicant of the subsequent application claiming priority shall be the same as that of the previous application. If they are different, the applicant of the subsequent application shall submit a document certifying the assignment of the right of priority signed or sealed by all the applicants of the previous application

within three months from the filing date of the subsequent application.

Where the applicant of the subsequent application fails to submit such a document within the time limit or the document certifying the assignment of the right of priority fails to meet the requirements, the examiner shall issue the Notification that *Claim to Priority Deemed Not to Have Been Made*.

6.2.2.5 Procedure of Previous Application Deemed to Have been Withdrawn

Where the right of domestic priority is claimed, the previous application shall be deemed to have been withdrawn from the date on which the subsequent application is filed.

Where any claim to the right of domestic priority made by the applicant is, after the preliminary examination, found to be in conformity with the provisions, the examiner shall issue the Notification that Application Deemed to be Withdrawn to the previous application. Where two or more domestic priorities are claimed, if the claims are, after the preliminary examination, found to be in conformity with the provisions, the examiner shall issue the Notification that Application Deemed to be Withdrawn to the relevant previous applications.

Any application that is deemed to have been withdrawn in such circumstance shall not be restored by request.

6.2.3 Withdrawal of Claim to the Right of Priority

The applicant may withdraw his claim to the right of priority after claiming the priority. Where multiple priorities are claimed, the applicant may withdraw his claim to one or some or all of the rights of priority.

Where any applicant withdraws his claim to the right of priority, he shall submit a declaration of withdrawal of the right of priority signed or sealed by all the applicants. If the declaration is in conformity with the provisions, the examiner shall issue the Notification of Passing Examination on Formalities. If the declaration does not comply with the provisions, the examiner shall issue the Notification that Declaration Deemed Not to Have Been Submitted.

Where the earliest priority date of a patent application is changed due to the withdrawal of a claim to the right of priority, and the various time limits from that priority date have not expired, these time limits shall be recalculated from the earliest priority date or the filing date after the change. Where the request for withdrawal of the claim to the right of priority reaches the Patent Office after fifteen months from the original earliest priority date, the time limit for publication of the subsequent application shall be still calculated from the original earliest priority

date.

Where any applicant claims the right of domestic priority, after the withdrawal of the priority, the previous application, which has been deemed to be withdrawn under Rule 32.3, shall not be requested to be restored due to the withdrawal of the priority claim.

6.2.4 Fee for Claiming Priority

Rules 93.1(1)

Rules 95.2

Where any claim to the right of priority is made, the applicant shall pay the fee for claiming priority when paying the filing fee. If the fee is not paid or not paid in full within the time limit, the examiner shall issue the Notification that Claim to Priority Deemed Not to Have Been Made.

Where the claim to the right of priority is deemed not to have been made or is withdrawn, the fee paid for claiming priority shall not be refunded.

6.2.5 Restoration of Claim to Right of Priority

Where the claim to the right of priority is deemed not to have been made and one of the following circumstances is met, the applicant may request to restore the right of claiming priority in accordance with the provisions of Rule 6:

(1) where the claim to the right of priority is deemed not to have been made because the applicant has failed to make any response to the Notification to Rectify Formalities within the specified time limit;

(2) where at least one item is filled correctly in the declaration claiming the priority, but the copy of the previous application document or the document certifying the assignment of the right of priority has not been submitted within the prescribed time limit;

(3) where at least one item is filled correctly in the declaration claiming the priority, but the fee for claiming the right of priority has not been paid or not paid in full within the prescribed time limit; or

(4) where the initial application of the divisional application has claimed the right of priority.

The provisions of Chapter 7, Section 6 of Part V of the Guidelines shall apply concerning dealing with the request for res-

toration of right.

Except for the above circumstances, the right of priority that is deemed not to have been made due to other reasons shall not be restored. For example, where the claim to the right of priority is deemed not to have been made by reason that the applicant fails to make a declaration in the request when the patent application is filed, the right of claiming priority shall not be restored.

6.3 Non-Prejudicial Disclosures

Article 24 provides that an invention-creation for which a patent is applied for does not lose its novelty if, within six months before the date of filing (or the priority date where priority is claimed), one of the following events occurred:

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

(2) where it was first made public at a prescribed academic or technological meeting; or

(3) where it was disclosed by another person without the consent of the applicant.

Rules 30.1

6.3.1 First Exhibited at an International Exhibition Sponsored or Recognized by the Chinese Government

The international exhibitions sponsored by the Chinese Government include those sponsored by the State Council or its departments, or by other institutions or local governments approved by the State Council. The international exhibitions recognized by the Chinese Government refer to the international exhibitions that are registered with or recognized by the International Exhibitions Bureau as stipulated by the International Exhibitions Convention. The international exhibitions refer to those at which exhibits shall be from foreign countries as well as from the organizing country.

Where an invention-creation for which a patent is applied for was first exhibited at an international exhibition sponsored or recognized by the Chinese Government within six months before the date of filing, if the applicant requests the grace period concerning novelty, the applicant shall make a declaration in the request while filing the application, and submit certifying materials within two months from the filing date.

The certifying materials of the international exhibition shall be provided by the organizer of the exhibition. In the certifying materials shall be indicated the date,venue,and name of the exhibition, and the exhibition date,form and contents of the invention-creation with the official seal of the organizer affixed.

6.3.2 First Made Public at a Prescribed Academic or Technological Meeting

Prescribed academic or technological meetings refer to those organized or held by the competent authorities under the State Council or national academic organizations, excluding those held below the provincial level or with the entrustment or in the name of the departments under the State Council or national academic organizations. Disclosure at a meeting of the latter nature is prejudicial to the novelty of the content, unless there is an agreement on confidentiality being concluded on such a meeting.

Where an invention-creation for which a patent is applied for was first made public at a prescribed academic or technological meeting within six months before the date of filing, if the applicant requests the grace period concerning novelty, the applicant shall make a declaration in the request while filing the application, and submit certifying materials within two months from the filing date.

The certifying materials of the academic or technological meetings shall be provided by the competent authority under the State Council or national academic organizations organizing the meeting. In the certifying materials shall be indicated the date, venue and name of the meeting, and the publication date, form, and contents of the invention-creation with the official seal of the organizer affixed.

6.3.3 Disclosed by Another Person Without the Consent of the Applicant

The disclosure made by any other person without the consent of the applicant includes the disclosure of the contents of an invention-creation by another person for his failure to comply with the explicit or implicit confidentiality agreement, and disclosure caused after another person gets to know the contents of an invention-creation from the inventor or applicant by means of coercion, fraud or espionage.

Where an invention-creation for which a patent is applied for is disclosed by another person without the consent of the applicant within six months before the date of filing, if the applicant knows about it before the date of filing, the applicant shall make a declaration in the request while filing the application, and submit

certifying materials within two months from the filing date. If the applicant knows about the matter after the date of filing, he shall submit a declaration to request for the grace period concerning novelty with certifying materials within two months after he knows about it. The examiner may, when necessary, require the applicant to submit the relevant certifying materials within the specified time limit.

In the certifying materials submitted by the applicant on the disclosure of the application contents by another person shall be indicated the date, manner and contents of the disclosure, which shall be signed or sealed by an attester.

Where the request for the grace period concerning novelty by the applicant is not in conformity with the above provisions, the examiner shall issue the Notification that Grace Period Concerning Novelty Deemed Not to Have Been Claimed.

6.4 Request for Substantive Examination

The procedure of substantive examination of a patent application for invention shall commence mainly at the request of the applicant for a substantive examination.

6.4.1 Relevant Requirements of Request for Substantive Examination

Art.35.1
Rules 93.2(2)
& 96

The request for substantive examination shall be made within three years from the date of filing (or priority date where priority is claimed) and the substantive examination fee shall be paid within the time limit.

Art.36

When the applicant for a patent for invention requests substantive examination, he shall furnish pre-filing-date (or pre-Priority date where priority is claimed) reference materials concerning the invention.

6.4.2 Examination and Handling of Request for Substantive Examination

The request for substantive examination shall be examined in accordance with the following requirements:

(1) where the applicant has not submitted the request for substantive examination within three months before the expiration of the time limit, the Patent Office shall issue the Notification Before Expiration of Time Limit.

(2)where the request for substantive examination has been made and the substantive examination fee has been paid within the time limit,but the formalities of the request for substantive examination have not been in conformity with the requirements, the examiner may issue the Notification that Request Deemed Not to Have Been Submitted. If the Notification Before Expiration of Time Limit has been issued,the examiner shall issue the Notification to Rectify Formalities to invite the applicant to make rectifications within the specified time limit. If no rectification is made within the time limit or if the rectification is not in conformity with the provisions,the examiner shall issue the Notification that Request Deemed Not to Have Been Made.

(3)where the applicant fails to submit the request for substantive examination within the prescribed time limit,or if the substantive examination fee is not paid or not paid in full within the prescribed time limit,the examiner shall issue the Notification that Application Deemed to be Withdrawn.

(4)where the formalities for substantive examination are in conformity with the provisions,the examiner shall issue the Notification that Patent Application for Invention Entering the Substantive Examination Stage when the application enters the procedure of substantive examination.

Rules 46

6.5 Request for Earlier Publication

The request for earlier publication is applicable only to patent applications for invention.

Where the applicant makes a request for earlier publication, the publication shall not be subject to any condition.

Where any declaration of request for earlier publication is not in conformity with the provisions,the examiner shall issue the Notification that Request Deemed Not to Have Been Made; otherwise the preparation of publication shall be started promptly after the patent application passes the preliminary examination.

After the application enters the preparation of publication,any request made by the applicant for revoking the previous request for earlier publication shall be deemed not to have been made, and the application documents shall be published in due course.

Art.32

6.6 Declaration of Withdrawal of Patent Application

Rule 36.1

Any applicant may request to withdraw his patent application at any time before the patent right is granted. When withdrawing a patent application, the applicant shall submit a declaration of withdrawal of the patent application with materials signed or sealed by all the applicants certifying agreement on the withdrawal of the patent application, or submit only a declaration of withdrawal of the patent application signed or sealed by all the applicants. Where any patent agency is appointed, the formalities of withdrawing the patent application shall be gone through by the patent agency with materials signed or sealed by all the applicants certifying agreement on the withdrawal of the patent application, or submit only a declaration of withdrawal of the patent application signed or sealed by the patent agency and all the applicants.

When a declaration of withdrawal of a patent application is submitted, the withdrawal shall not be subject to any condition.

Where the declaration of withdrawal of a patent application is not in conformity with the provisions, the examiner shall issue the Notification that Declaration Deemed Not to Have Been Submitted. If the declaration complies with the provisions, the examiner shall issue the Notification of Passing Examination on Formalities. The effective date of withdrawal of a patent application is the date of issuance of the Notification of Passing Examination on Formalities. Where the patent application for invention has been published, the withdrawal shall be announced on the Patent Gazette. The applicant shall not request to revoke the declaration of withdrawal of a patent application without justified reasons. Where the declaration of withdrawal is made in bad faith by a person who unlawfully usurped the right to apply for the patent, the person who has the right to apply for the patent (the valid legal proof shall be submitted) may request that the declaration of withdrawal of the patent application be revoked.

Rule 36.2

Where any declaration to withdraw a patent application is submitted after the preparation of publication, the application documents shall be published or announced as scheduled, but the examination procedures shall come to an end.

6.7 Changes in Bibliographic Data

The bibliographic data (i.e., bibliographic matters) includes

the application number, filing date, title of invention-creation, classification symbol, information relating to priority (including the application number, the filing date, and the name of the competent authority of the earlier application), information relating to the applicant or the patentee (including his/its name, nationality or country/region in which it is registered, address and postcode, organizational code or number of identification card), name of the inventor, information relating to the patent agency (including its name, its organizational code, address and postcode, name of the patent agent, his certificate number, and the telephone number), information relating to the contact person (including his name, address and postcode, and the telephone number), and representative, etc.

Where any of the bibliographic data concerning information relating to personnel (referring to information relating to the applicant or patentee, name of the inventor, information relating to the patent agency, information relating to the contact person and representative) has changed, the party concerned shall go through formalities to make a change in the bibliographic data in accordance with the relevant provisions. Where any other bibliographic data has changed, the Patent Office may make changes ex officio in the light of specific circumstances.

Art.10
Rule 119.2

Where the patent application right (or the patent right) is assigned or is transferred for any other reason, the applicant or patentee shall register it with the Patent Office in the form of changes in the bibliographic data.

6.7.1 Formalities of Making Changes in Bibliographic Data

6.7.1.1 Statement for Change in Bibliographic Data

Where any change in the bibliographic data is requested, it is required to submit the statement for change in bibliographic data. Where several items of the bibliographic data of a patent application are to be changed at the same time, only one such statement is required to be submitted. Where the same item of the bibliographic data of one patent application is to be changed continuously, one statement for each of the changes is required to be submitted respectively. Where the same item of the bibliographic data of several patent applications is to be changed, even

if the contents to be changed are completely identical, one statement for each application is required to be submitted.

Rule 93.1(5)

6.7.1.2 Handling Fee for Change in Bibliographic Data

When a request for a change in the bibliographic data is submitted, the handling fee for a change in the bibliographic data shall be paid in accordance with the relevant provisions. The handling fee for a change in the bibliographic data in the patent fee schedule prescribed by the Patent Office refers to the fee for each request for each change in the bibliographic data of each patent application. In going through the formalities of a change in bibliographic data in one patent application (or patent), where the applicant makes a request for change in the same item of the bibliographic data continuously, it shall be regarded as one change. Where the applicant requests to change the inventor and/or the applicant (or patentee), 200 Yuan shall be paid for a change in the bibliographic data. Where the applicant requests to change the patent agency and/or agent, 50 Yuan shall be paid for a change in the bibliographic data.

For example, in going through the formalities of a change in bibliographic data, where the applicant requests to change the applicant of a patent application from A to B, and then from B to C, such continuous change shall be regarded as one change in the bibliographic data of applicant, and 200 Yuan shall be paid for a change in the bibliographic data. If at the same time requesting to change the name of the inventor, the applicant is still only required to pay 200 Yuan for a change in one item in the bibliographic data.

For another example, in going through the formalities of a change in bibliographic data, where the applicant requests to change the applicant of a patent application from A to B, and at the same time requests to change the patent agency and agent, 200 Yuan shall be paid for a change in the bibliographic data of the applicant and 50 Yuan shall be paid for a change in the bibliographic data of patent agency and agent by the applicant.

Rule 99.3

6.7.1.3 Time Limit for Paying Handling Fee for Change in Bibliographic Data

Unless otherwise prescribed in the provisions, the handling

fee for a change in the bibliographic data shall be paid within one month from the date on which the request concerned is submitted. If the fee is not paid or not paid in full within the time limit, the request for a change in the bibliographic data shall be deemed not to have been made.

6.7.1.4 Person Going through Formalities of Change in Bibliographic Data

Where no patent agency is appointed, the applicant (or patentee), or his representative shall go through the formalities of a change in the bibliographic data. Where any patent agency has been appointed, the formalities shall be gone through by the patent agency. Where the change is due to the transfer of the right, the formalities may be gone through by the new right owner or his appointed patent agency.

Art.10

6.7.2 Certifying Documents for Change in Bibliographic Data

Rule 119.2

6.7.2.1 Change of Name of Applicant (or Patentee)

(1) Where any person submits the request for a change due to the change of his name, certifying document provided by the household registration administrative authority shall be submitted.

(2) Where any person submits the request for a change due to writing errors, a declaration signed or sealed by himself and the document certifying his identification shall be submitted.

(3) Where any legal person of an enterprise submits the request for a change due to the change of its name, the certifying document provided by the administrative authority for industry and commerce shall be submitted.

(4) Where any legal person of an institute or social body submits the request for a change due to the change of its name, the certifying document provided by registration administrative authority shall be submitted.

(5) Where any legal person of an administrative organ submits the request for a change due to the change of its name, the certifying document provided by the administrative authority of the next higher level shall be submitted.

(6) Where any other type of organization submits the request for a change due to the change of its name, the certifying document

provided by the registration administrative authority shall be submitted.

(7)Where any foreign individual,enterprise,or other type of organization submits the request for a change due to the change of his/its name,the corresponding certifying document shall be submitted with reference to the above-mentioned provisions.

(8)Where any foreign individual,enterprise,or other type of organization submits the request for a change due to the change in the Chinese translation of his/its name,the applicant's (or patentee's)declaration shall be submitted.

Rule 14.1

6.7.2.2 Transfer of Right to Apply for a Patent (or Patent Right)

(1)Where the request for a change is submitted due to a right transfer as a result of a dispute over the ownership of the right of the applicant (or patentee),the person requesting a change in the bibliographic data shall submit an agreement of transfer of the right signed or sealed by all the interested parties if the dispute has been settled through negotiations; if the dispute is settled by the local intellectual property administrative authority through mediation,the mediation award of the said authority shall be submitted; or if the dispute is settled by the People's Court through mediation or judgment,the mediation award or judgment of the People's Court which has taken effect shall be submitted. With regard to the judgment made by a first-instance court,the examiner shall,after receiving the judgment,inquire the parties concerned whether or not an appeal has been lodged. Where no response is made or no appeal has been lodged within the specified time limit,the change shall be made in accordance with the said judgment. If an appeal has been lodged,the interested party shall furnish the certifying documents provided by the People's Court of the higher level,and the initial judgment of the People's Court shall no longer have any legal effect. Where the dispute is settled by an arbitration organization through mediation or arbitration,the mediation or arbitration award shall be submitted.

(2)Where the right of the applicant (or patentee)has been transferred because of assignment or gift,and a request for a change in the bibliographic data is submitted,the contract on the assignment or gift shall be submitted. If such a contract is concluded

by any entity, the official seal of the entity or the seal specially used for concluding contracts shall be affixed. If the contract is concluded by any individual, it shall be signed or sealed by the person himself. Where there are two or more applicants (or patentees), a document certifying that all the right owners have agreed on the assignment or gift shall be submitted.

(3) Where the assignment (or gift) of the right to apply for a patent (or the patent right) involves a foreign individual, enterprise or other type of organization, any request for a change in the bibliographic data shall be in conformity with the following provisions:

(i) where both the assignor and the assignee are foreign individuals, enterprises, or other type of organizations, the contract on the assignment signed or sealed by both parties shall be submitted;

Art.10

(ii) for an application for patent for invention or utility model (or patent), where the assignor is an individual or entity of mainland China and the assignee is a foreign individual, enterprise or other type of organization, the technology export license or the freely export technology contract registration certificate issued by the competent authority for commerce under the State Council, or the Freely Export Technology Contract Registration Certificate issued by the local competent authority for commerce, along with the contract on assignment signed or sealed by both parties, shall be submitted; or

(iii) where the assignor is a foreign individual, enterprise or other type of organization and the assignee is an individual or entity of mainland China, the contract on assignment signed or sealed by both parties shall be submitted.

Where an individual or entity in mainland China and a foreign individual, enterprise or other type of organization are joint assignors, and the assignee is a foreign individual, enterprise or other type of organization, the provisions of item (ii) shall apply; where an individual or entity in mainland China and a foreign individual, enterprise or other type of organization are joint assignees, and the assignor is a foreign individual, enterprise or other type of organization, the provisions of item (iii) shall apply.

Where an individual or entity in mainland China and an individual, enterprise or other organization of Hong Kong, Macao or Taiwan are joint assignors, and the assignee is a foreign individual,

enterprise or other type of organization, the provisions of item (ii) shall apply; where an individual or entity of mainland China and an individual, enterprise or other organization of Hong Kong, Macao, or Taiwan are joint assignee, and the assignor is a foreign individual, enterprise or other type of organization, the provisions of item (iii) shall apply.

Where the assignor is an individual or entity in mainland China and the assignee is an individual, enterprise or other organization of Hong Kong, Macao or Taiwan, the provisions of item (ii) shall apply.

(4) Where any applicant (or patentee), which is an entity, requests to make a change in the bibliographic data due to merger, breakup, winding-up, or changed organization form, certifying documents provided by the registration administrative authority shall be submitted.

(5) Where any applicant (or patentee) requests to make a change in the bibliographic data due to succession, a document that has been notarized certifying that the interested party is the only legitimate successor or the interested party has included all successors in title. The joint successors in title shall inherit jointly the right to apply for a patent (or the patent right) except where otherwise provided for in a law.

(6) Where the request to make a change is due to auction of the right to apply for a patent (or the patent right), legally valid certifying documents shall be submitted.

(7) For the transfer of patent right in hypothecation, documents certifying the agreement on the change from both parties of hypothecation shall be submitted besides required certifying documents for the change.

Rule 119.2

6.7.2.3 Change of Inventor

(1) Where the request to make a change is due to the change of the inventor's name, the provisions of Section 6.7.2.1 (1) of this chapter shall apply.

(2) Where the request to make a change is due to failure to fill in the name of inventor or his wrong name filled in, the certifying document signed or sealed by all the applicants (or patentees) and all the inventors before the change shall be submitted.

(3) Where the request to make a change is due to the dispute

over the eligibility of the inventor, the provisions of Section 6.7.

2.2 (1) of this chapter shall apply.

(4) Where the request to make a change is due to the change of the Chinese translation, the inventor's declaration shall be submitted.

Rule 119.2

6.7.2.4 Change of Patent Agency and Agent

(1) Where a patent agency changes its name or address, it shall firstly request to make a change in the registration at the competent department of the State Intellectual Property Office. After the change in the registration takes effect, the Patent Office shall make changes in the bibliographic data of all the valid patent applications and patents for which it acts as the patent agency. The patent agency shall go through the formalities for the change of a patent agent for each application having such change.

(2) Before going through the formalities of dissolution or resignation of appointment, one party shall inform the other party in advance.

To dissolve the appointment, the applicant (or patentee) shall submit the request for making a change in the bibliographic data and attach a dissolution signed or sealed by all the applicants (or patentees), or shall submit only the request for making a change in the bibliographic data signed or sealed by all the applicants (or patentees).

To resign from the appointment, the patent agency shall submit the request for making a change in the bibliographic data, and attach a declaration of accepting resignation from the appointment signed or sealed by the applicant (or patentee) or its representative, or a declaration sealed by the patent agency indicating the applicant (or patentee) has been notified.

Before the formalities of making a change take effect (i.e., the Notification of Passing Examination on Formalities is issued), the agency relationship is still valid and the acts performed by the patent agency on behalf of the applicant (or patentee) shall remain valid after the formalities of making a change take effect. Where the formalities for a change are not in conformity with the provisions, the examiner shall issue the Notification that Request Deemed Not to Have Been Submitted to the party going through the formalities for a change. Where the formalities for a

change meet the requirements,the examiner shall issue the Notification of Passing Examination on Formalities to parties.

Where the first applicant is a foreign applicant having no habitual residence or business office in the mainland China,when going through the formalities of dissolving or resigning the appointment, the applicant (or patentee)shall at the same time appoint a new patent agency,otherwise the formalities of dissolving or resigning the appointment shall not be gone through,and the examiner shall issue the Notification that Request Deemed Not to Have Been Made.

Where the first applicant is from Hong Kong,Macao,or Taiwan having no habitual residence or business office in the mainland China,when going through the formalities of dissolving or resigning the appointment,the applicant (or patentee)shall at the same time appoint a new patent agency,otherwise the formalities of dissolving or resigning the appointment shall not be gone through,and the examiner shall issue the Notification that Request Deemed Not to Have Been Made.

(3)Where any applicant (or patentee)changes his patent agency, the declaration dissolving the appointment of the initial patent agency and the power of attorney of the new appointed patent agency,signed or sealed by all the applicants (or patentees), shall be submitted.

(4)Where the right to apply for a patent (or the patent right)is transferred,if the applicant (or patentee)after the change appoints a new patent agency,the power of attorney signed or sealed by all the applicants (or patentees)after the change shall be submitted. Where the applicant (or patentee)after the change appoints the initial patent agency,the power of attorney signed or sealed by the newly added applicant (or patentee) shall be submitted.

Rule 119.2

6.7.2.5 Change of Nationality of Applicant (or Patentee)

Where any applicant (or patentee)changes his nationality, documents certifying his identification shall be submitted.

Rule 120

6.7.2.6 Formalities Requirements for Certifying Documents

(1)For any submitted certifying document,the application

number (or patent number), the title of invention-creation and the name of the applicant (or patentee) shall be indicated.

(2) One certifying document corresponds to only one request to make a change in the bibliographic data. Separate certifying documents shall be submitted for continuous changes of the same item in the bibliographic data.

(3) The certifying document shall be the original. Where the certifying document is a copy, it shall be notarized or affixed with the official seal of the competent department providing the certifying document (except that the original document has been deposited for the record in the Patent Office). Where the certifying document formed in a foreign country is a copy, it shall be notarized.

6.7.3 Examination and Approval of Request for Change in Bibliographic Data

The examiner shall examine in accordance with the statement for change in bibliographic data and the attached certifying document submitted by the parties involved. Where the formalities of requesting to make a change in the bibliographic data are not in conformity with the provisions, the Notification that Request Deemed Not to Have Been Made shall be sent to the requesting person. Where the formalities of requesting to make a change in the bibliographic data are in conformity with the provisions, the Notification of Passing Examination on Formalities shall be sent to the parties concerned, informing them the state of the bibliographic data before and after the change. If the change is required to be announced, the requesting person shall also be informed of the volume number and the issue number of the Patent Gazette in which the announcement is scheduled.

Where the change in the bibliographic data relates to the transfer of the relevant right, the Notification of Passing Examination on Formalities shall be issued to both parties. Where one request for change of the applicant (or patentee) involves several continuous changes, the Notification of Passing Examination on Formalities shall be issued to the applicant (or patentee) before the change and the applicant (or patentee) after the last change. The applicant (or patentee) indicated in the notification shall be the applicant (or patentee) after the change. Where the request

for making a change concerns the change of the patent agency, the notification shall be sent to both patent agencies before and after the change. At the same time, the examiner shall complete the followings:

(1) where reduction or postponement of payment of fees are involved:

(i) where all the applicants (or patentees) have been changed, the reduction or postponement of payment of fees will not be granted if the new applicant (or patentee) does not request it. The examiner shall change the sign marking the reduction or postponement of payment of fees in the database and notify the applicant (or patentee);

(ii) where the number of applicants (or patentees) increases after the change, the reduction or postponement of payment of fees will not be granted if the new added applicant (or patentee) does not request it. The examiner shall change the sign marking the reduction or postponement of payment of fees in the database and notify the applicant (or patentee);

(iii) where the number of applicants (or patentees) decreases after the change, the proportion of reduction or postponement of payment of fees shall not be changed if the applicant (or patentee) does not request it.

The applicant (or patentee) after the change may again go through the formalities of request for reduction or postponement of payment of fees in accordance with the rules for reduction or postponement of payment of fees.

(2) Where the applicant (or patentee) has filled in the information of the contact person before the change, if the applicant (or patentee) after the change does not appoint as such, the examiner shall delete the information of the contact person appointed by the former applicant (or patentee) in the database.

(3) Where the appointment of a patent agency is involved, if the applicant (or patentee) after the change has not appointed any patent agency, the examiner shall delete the information of the patent agency appointed by the former applicant (or patentee) in the database.

(4) Where the change shall be announced in the Patent Gazette in accordance with the provisions, e.g., the change of the patentee, etc., the information before and after the change shall

be announced.

(5)Where the name or address of a patent agency is changed,or the revocation of patent agency is approved in accordance with the Rules Governing Patent Agency,the examiner shall complete the following:

(i)as for the uniformly handling due to the group change of the patent agency in the bibliographic data and revocation of patent agency,the relevant bibliographic data in database shall be amended uniformly;

(ii)where the applicant (or patentee)of the patent application (or patent)having appointed the revoked patent agency is an individual or entity in mainland China,the first applicant (or patentee)shall be deemed to be the representative of the patent application from the date of the announcement of the said revocation unless otherwise declared. The applicant (or patentee)may appoint another patent agency.

Art.10.3

6.7.4 Taking Effect of Change in Bibliographic Data

(1)The change in the bibliographic data shall take effect from the date of issuance of Notification of Passing Examination on Formalities by the Patent Office. Transfer of the right to apply for a patent (or the patent right)shall take effect from the date of registration,which is the date of issuance of the above Notification of Passing Examination on Formalities.

(2)Before the formalities of change in the bibliographic data take effect,the notification issued by the Patent Office and the relevant matters under the preparation for publication or announcement shall be based upon those before the change.

Rule 44

7. Examination on Obvious Substantive Defects

7.1 Examination According to Article 2.2

According to Article 2.2,“invention” in the Patent Law means any new technical solution relating to a product,a process or improvement thereof.

In the preliminary examination,where the application documents describe part of the technical features of the “invention”, the examiner may not judge whether or not the technical solution is complete,or may not judge whether or not the technical solution

can be carried out. However, if there are only descriptions of technical index, advantages and effects but no description relating to the solution of a technical problem or even no description of technical contents, the examiner shall issue the Office Action and invite the applicant to make observations or amendments within the specified time limit. If no response is made within the specified time limit, the examiner shall issue the Notification that Application Deemed to be Withdrawn. If the application is still not in conformity with the provisions after the applicant has made observations or amendments, the examiner may reject the application.

7.2 Examination According to Article 5

According to Article 5, no patent right shall be granted for any invention-creation that is contrary to the laws or social morality or that is detrimental to public interest, and no patent right shall be granted for an invention-creation where acquisition or use of genetic resources, on which the development of the invention-creation relies, is not consistent with the requirements of the laws and administrative regulations.

In preliminary examination, the examiner shall, under the provisions of Chapter 1, Section 3 of Part II of the Guidelines, examine whether or not the invention-creation is obviously contrary to the laws, or obviously contrary to social morality, or obviously detrimental to public interest; where the development of the invention-creation relies on the said genetic resources, the examiner shall examine whether or not the acquisition or use of genetic resources is obviously contrary to the relevant laws and administrative regulations. If the examiner finds that the entire contents or part of the contents of the application fall under one of those aspects mentioned above, for example, if the applicant filed an application with the following or similar contents: "A kind of drug taking tool", "A kind of tool for gambling and the method of its use", the examiner shall issue the Office Action, state the reasons, and notify the applicant to submit observations or to delete the relevant part within the specified time limit. If the observations submitted by the applicant are not sufficient to justify that the relevant invention does not fall under Article 5, or the applicant refuses to delete the relevant part of the invention without

any fully justified reason, the examiner shall reject the application. If the applicant has deleted the relevant part of the invention as requested by the examiner, and added a few words or sentences that are indispensable from the context, it shall be permitted.

Any invention-creation that is contrary to Article 5 referred to in the above paragraph shall not include the invention-creation merely because the exploitation of which is prohibited by the laws.

7.3 Examination According to Article 20.1

According to Article 20.1, where any applicant intends to file an application abroad for any invention developed in China, it or he shall file it in advance with the Patent Office for confidentiality examination.

According to Rule 8.1, the invention developed in China refers to an invention the substantive contents of the technical solution of which were made within the territory of China.

In preliminary examination, where the examiner finds, with justified reasons, that an application for patent has been filed in a foreign country in violation of above provisions, the examiner shall issue Office Action when a patent is applied for the same invention in China. If the observations made by the applicant fail to prove that the application does not fall under the circumstances mentioned above, the examiner may reject the application on the grounds of Article 20.1, Article 20.4, and Rule 44.

7.4 Examination According to Article 25

According to Article 25, no patent right shall be granted for any of the following subject matters:

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

For processes used in producing products referred to in item (4) of the preceding paragraph, patent right may be granted in accordance with the provisions of the Patent Law.

In preliminary examination, the examiner shall, under the provisions of Chapter 1, Section 4 of Part II of these Guidelines,

examine whether or not any invention for which a patent is applied for obviously falls under any of the subject matters for which no patent right shall be granted in accordance with Article 25. If it is found that the entire contents of the application belong to one of the subject matters described in Article 25, for example, the applicant filed an application for patent for the following or similar contents: "A newly discovered minor planet", "A method for diagnosing diseases of the human body", the examiner shall issue the Office Action, state the reasons, and notify the applicant to submit observations within a specified time limit. If the applicant's observations fail to prove that the subject matter of the application is not one of the subject matters mentioned above, the examiner may make a decision of rejection. If it is found that only a part of the contents of the application belongs to one of the subject matters mentioned above, and that part is difficult to be separated from the application, the application may be left to be handled in the substantive examination without any handling in the preliminary examination.

7.5 Examination According to Article 31.1

According to Article 31.1, a patent application for invention shall be limited to one invention. Two or more inventions belonging to a single general inventive concept may be filed as one application.

Rule 42.2

In preliminary examination, only when the application contains two or more inventions which obviously have not any relation with each other, the examiner shall issue the Office Action and notify the applicant to amend the application to meet the requirement of unity. If the applicant refuses to do so without any justified reason, the application may be rejected.

7.6 Examination According to Article 33

According to Article 33, an applicant may amend his patent application for invention, but the amendment to the application may not go beyond the scope of the disclosure contained in the initial description and claims.

In preliminary examination, only when the examiner issues the Office Action, and requests the applicant to amend the application, is it necessary to examine whether or not the amendments made by the applicant obviously go beyond the scope of the dis-

closure contained in the initial description and claims. If the amendments obviously go beyond the scope of the initial disclosure, for example, the applicant has amended the data or has expanded the scope of the numerical value, or has introduced a claim of a technical solution which has not been disclosed in the initial description, or has added one or more pages of the substantive contents of the invention which are not included in the initial description or claims, the examiner shall issue the Office Action and notify the applicant that the amendments are not in conformity with the provisions of Article 33. If the amendments are still not in conformity with the requirements after the applicant makes observations or rectification, the examiner may make a decision of rejection.

In preliminary examination, where the applicant submits the text of amendments on his own initiative in accordance with Rule 51, the examiner, besides examining the formalities of the rectification, shall only examine whether or not the time for submitting the said amendments on the applicant's initiative is in conformity with the provisions of Rule 51. If it meets the requirements, the decision that the said amendments have passed the formal examination shall be made and the said amendments shall be kept in the file. If it does not meet the requirements, the decision providing reference for the substantive examination shall be made and the said amendments shall be kept in the file. The contents of the text of amendments submitted by the applicant on his own initiative shall not be examined and shall be left to be handled in the substantive examination.

7.7 Examination According to Rule 17

The description shall not use any words or sentences that have no relation to technology. Nor shall it contain any commercial advertising or any language belittling or slandering other persons or products of other persons. However, pointing out objectively the problems existing in the background art shall not be regarded as a belittling act. The description shall include technical contents of the invention. Where the description is obviously not in conformity with those requirements, the examiner shall issue the Office Action, state the reasons, and invite the applicant to make observations or rectifications within the specified time limit.

If no response is made within the specified time limit, the examiner shall issue the Notification that Application Deemed to be Withdrawn. If the application is still not in conformity with the provisions after the applicant has made observations or rectifications, the examiner may reject the application.

In preliminary examination, if part of the technical features of the invention are described in the description, and its form is in conformity with the requirements of Section 4.2 of this Chapter, it is not necessary to examine other substantive issues, which shall be dealt with in the substantive examination.

7.8 Examination According to Rule 19

The claims shall describe the technical features of the invention.

The claims shall not contain any words or sentences that have no relation to the contents of the technical solution, such as "to ask for the protection of the right of production and sale under this patent", etc., nor shall the claims contain any commercial advertising, or any language belittling other persons or products of other persons.

In preliminary examination, where the claims are obviously not in conformity with those requirements, the examiner shall issue the Office Action, state the reasons, and invite the applicant to make observations or rectifications within the specified time limit. If no response is made within the specified time limit, the examiner shall issue the Notification that Application Deemed to be Withdrawn. If the application is still not in conformity with the provisions after the applicant has made observations or rectifications, the examiner may reject the application.

8. Amendment Made by Examiner Ex Officio

According to Rule 51.4, the examiner may make amendment ex officio to the obvious clerical mistakes and symbol mistakes in the documents of patent application for invention before the application is qualified to pass the preliminary examination, and notify the applicant accordingly. The usual circumstances of amendment ex officio include the following:

(1) request: amend the omission, error or repetition of the names of the province (autonomous region, the municipality directly under the Central Government), the names of the municipality,

the postcode and other information in the address of the applicant or contact person;

(2)claims and description: correct the obvious clerical mistakes and punctuation mistakes,amend the obvious editorial mistakes, and delete the obviously unnecessary information. However, any amendment likely to cause the change of the scope of the disclosure contained in the initial application documents falls outside the scope of amendment ex officio; and

(3)abstract: add content obviously missing,correct the obvious clerical mistakes and punctuation mistakes,delete the obviously unnecessary information,and specify the figure accompanying the abstract.

Chapter 2 Preliminary Examination of Patent Applications for Utility Model

1. Introduction

Rule 44.1

In accordance with the provisions of Articles 3 and 40,the Patent Office receives and examines patent applications for utility model. Where it is found after preliminary examination that there is no grounds for rejection of the application,the Patent Office shall make a decision to grant the patent right for utility model,issue the relevant patent certificate,and register and announce it. Hence,the preliminary examination of a patent application for utility model is a necessary procedure after the acceptance of a patent application for utility model,and before the grant of that application.

The scope of the preliminary examination of a patent application for utility model is as follows:

(1)formal examination of the application documents,including whether or not the patent application contains the application documents as provided for in Article 26,and whether or not the documents are in conformity with the provisions of Rules 2, 3,16-23,40,42,43.2,43.3,51,52,119,and 121;

(2)examination on obvious substantive defects of the application documents,including whether or not the patent application obviously falls under Article 5 or 25,or is obviously not in conformity with the provisions of Article 18,19.1 or 20.1,or is obvi-

ously not in conformity with the provisions of Article 2.3,22.2 or 22.4,26.3 or 26.4,31.1,33,or Rules 17-22,43.1,or is not entitled to a patent right in accordance with the provisions of Article 9;

(3)formal examination of other documents,including whether or not other formalities and documents relating to the patent application are in conformity with Articles 10.2,24,29,30 and Rules 2,3,6,15,30,31.1-31.3,32,33,36,45,86,100 and 119; and

(4)examination of the relevant fees,including whether or not the relevant fees for the patent application have been paid in accordance with Rules 93,95 and 99.

2. Principles of Examination

In the procedure of preliminary examination,the examiner shall abide by the following principles of examination.

(1)Principle of confidentiality

In the patent application examination and approval proceedings, the examiner shall be obliged to keep confidential the patent application documents and other patent application related contents that are not published or announced,and other information that is not proper to be made known in accordance with the relevant provisions on confidentiality.

(2)Principle of written examination

The examiner shall examine on the basis of the written documents submitted by the applicant. The Office Action (including the Notification to Make Rectification)and the result of examination shall be sent in written form to notify the applicant. In the preliminary examination procedure,no interview shall be held in principle.

(3)Principle of hearing

Before making a decision of rejection,the examiner shall notify the applicant of the facts,grounds and evidence for rejection, and give the applicant at least one opportunity to make observations and/or amend the application documents. When the examiner makes a decision of rejection,the facts,grounds and evidence for rejection shall have been notified to the applicant,and the decision shall not contain any new facts,grounds and/or evidence.

(4)Principle of procedural economy

Where the provisions are complied with,the examiner shall

improve the efficiency of examination as much as possible, and shorten the examination period. With regard to the application with defects that can be eliminated through rectifications, the examiner shall conduct a comprehensive examination and do his best to point out all the defects in one Notification to Make Rectification. With regard to the application with substantive defects that can not be eliminated through rectifications, the examiner may only point out the substantive defects in the Office Action without examining the formal defects in the application documents and other documents. With regard to the application with defects that all of them can be amended ex officio, the examiner may not issue the Notification to Make Rectification.

In addition to complying with the above principles, the examiner shall notify the applicant of subsequent procedures that can be initiated while making the decision that any document relating to the patent application is deemed not to have been submitted, the decision that the application is deemed to have been withdrawn, or the decision of rejection.

3. Procedure of Examination

Art.40

3.1 Notification to Grant Patent Right

Where it is found after preliminary examination that there is no grounds for rejection of the patent application for utility model, the examiner shall make a decision to grant the patent right for utility model. The patent application for utility model for which the patent right may be granted includes the application which satisfies the requirements of the preliminary examination without the necessity of rectification and the application which meets the requirements of the preliminary examination through rectification.

The Notification to Grant Patent Right shall, besides the information of the addressee and the bibliographic data, include the text to which the right is granted and the name of the utility model. Where the examiner has made amendments ex officio, the corresponding content of the amendments shall be indicated.

3.2 Rectification of Application Documents

During preliminary examination, for a patent application

whose application documents have defects that can be eliminated through rectifications, the examiner shall conduct a comprehensive examination and issue the Notification to Make Rectification.

Where the defects still exist in the application documents after the applicant makes rectification, the examiner shall issue another Notification to Make Rectification.

The Notification to Make Rectification shall, besides the information of the addressee and the bibliographic data, include the following contents:

(1) pointing out which documents the Notification to Make Rectification is directed to and when the applicant filed them;

(2) clearly and specifically pointing out the defects in the application documents, and pointing out what provisions of the Patent Law and its Implementing Regulations the application documents do not comply with;

(3) making the examiner's opinion clear and specific with possible suggestions so as to enable the applicant to understand the examiner's intentions;

(4) specifying the time limit of response to the Notification to Make Rectification for the applicant; and

(5) suggesting the applicant the types of documents and the required number thereof while making rectification.

3.3 Handling of Obvious Substantive Defects

During the procedure of the preliminary examination, if the examiner finds the application documents of a patent application have obvious substantive defects that cannot be eliminated through rectification, the examiner shall issue an Office Action.

The Office Action shall, besides the information of the addressee and the bibliographic data, include the following contents:

(1) pointing out which documents the Office Action is directed to and when the applicant filed them;

(2) clearly and specifically pointing out the defects in the application documents, and pointing out which provisions of the Patent Law and its Implementing Regulations the application documents do not comply with; with regard to the facts that the application includes obvious substantive defects, the examiner may make explanation in support of evidence when necessary;

(3) making clear the examiner's opinion that the patent ap-

placation is to be rejected under the relevant provisions of the Patent Law and its Implementing Regulations; and

(4) specifying the time limit of response to the Office Action for the applicant.

3.4 Response to Notification

The applicant shall, after receiving the Notification to Make Rectification or the Office Action, make rectification or observations in the specified time limit. The applicant shall, when making rectification of the patent application, submit the rectification and the corresponding replacement sheets of the amended documents. The replacement sheets of the amended application documents shall be in duplicate, while only one copy is required for other documents. The amendment of the application documents shall be made to the defects pointed out in the Notification to Make Rectification. The content of amendment shall not go beyond the scope described in the description and claims filed on the date of filing.

Where the applicant makes no response within the time limit, the examiner shall, depending on the circumstances, issue the Notification that Application Deemed to be Withdrawn or other notifications. Where it is difficult for the applicant to make response within the specified time limit due to justified reasons, he may request to extend the time limit. The provisions of Chapter 7, Section 4 of Part V of these Guidelines shall apply when handling the request for extension of the time limit.

Where a patent application is deemed to have been withdrawn resulting from failure to meet the time limit due to force majeure or with justified reasons, the applicant may, within the prescribed time limit, submit a request to the Patent Office for restoration of the right. The provisions of Chapter 7, Section 6 of Part V of these Guidelines shall apply when handling the request for restoration of the right.

3.5 Rejection of Application

3.5.1 Conditions of Rejection

Where obvious substantive defects which, the examiner believes, can not be eliminated through rectifications exist in the ap-

plication documents,if the applicant,within the specified time limit,has neither put forward any convincing observations and/or evidences,nor made any amendments on the defects pointed out in the notification after the examiner's issuance of the Office Action,for example,the applicant only corrects the clerical mistakes or changes the expressions,the examiner may make a decision of rejection. Where the applicant has made amendments on the defects pointed out in the notification,another opportunity to make further observations and/or amendments to the application documents shall be provided to the applicant even if the said defects still exist. However,where the later amendments concern the same kinds of defects,if such defects which have been notified to the applicant still remain unrectified,the examiner may make a decision of rejection.

Where formal defects which can be eliminated through rectification exist in the application and remain unrectified after the applicant makes observations or rectification within the specified time limit upon the examiner's issuance of the Notification to Make Rectification twice in respect of the said defects,the examiner may make a decision of rejection.

3.5.2 The Text of Decision of Rejection

The text of the decision of rejection shall include three parts: brief of the case,grounds for rejection,and conclusion.

(1)The part of brief of the case shall indicate the text of the application upon which the decision of rejection is based and briefly state the examination procedure of the rejected application.

(2)The part of grounds for rejection shall state in detail the facts,grounds and evidence on which the rejection is based,with special attention paid to the following requirements:

(i)applying the provisions appropriately. Where a patent application can be rejected under different provisions of the Patent Law and its Implementing Regulations,the rejection shall be based upon the most applicable,dominant provisions,and all the other substantive defects in the patent application shall be indicated briefly; the provisions upon which rejection is based shall be included in the list provided in Rule44.

(ii)basing the rejection on the convincing facts,grounds and evidence,and the hearing of these facts,grounds and evidence has been in conformity with the requirements for the rejection of

the application;

(iii) where an application is to be rejected due to the remaining defects which are not eliminated after several rectifications, the examiner shall point out that the defects still exist in the final rectified documents after the examiner has issued twice or more the Notification to Make Rectification regarding the said defects; and

(iv) where the rejection is made on the basis of Article 2.3, 5,9,20.1,22.2 or 22.4,25,26.3 or 26.4,31.1,33, or Rule 20,43.1, the obvious substantive defects of the application documents shall be analyzed.

The examiner shall also give a brief comment on the argument made by the applicant in the part of the grounds for rejection.

(3) The corresponding provisions of the Patent Law and its Implementing Regulations which the patent application is contravening shall be clearly indicated in the part of conclusion with a statement that the patent application is rejected in accordance with Rule 44.2.

3.6 Interlocutory Examination and Handling after Reexamination

Where a patent application is rejected for not in conformity with the provisions of the Patent Law and its Implementing Regulations, the applicant may, within the prescribed time limit, file a reexamination request with the Patent Reexamination Board if he is not satisfied with the decision of rejection. For the interlocutory examination for the reexamination request and the handling after reexamination, the provisions of Chapter 8, Section 8 of Part II of these Guidelines shall apply.

4. Examination of Other Documents and Relevant Formalities

4.1 Appointment of Patent Agency

The provisions in Chapter 1, Section 6.1 of this Part shall apply.

4.2 Claiming Right of Priority

The provisions in Chapter 1, Section 6.2 of this Part shall apply.

4.3 Non-Prejudicial Disclosures

The provisions in Chapter 1,Section 6.3 of this Part shall apply.

4.4 Declaration of Withdrawing Patent Applications

The provisions in Chapter 1,Section 6.6 of this Part shall apply.

4.5 Changes in Bibliographic Data

The provisions in Chapter 1,Section 6.7 of this Part shall apply.

5. Examination in Accordance with Articles 5 and 25

For the examination on whether a patent application for utility model obviously belongs to the application for which no patent right shall be granted under Articles 5 and 25,the provisions in Chapter 1,Section 3 and 4 of Part II of these Guidelines shall apply.

6. Examination in Accordance with Article 2.3

In accordance with Article 2.3,“Utility Model” in the Patent Law means any new technical solution relating to the shape,the structure,or their combination,of a product,which is fit for practical use. This is the general definition of utility model which is eligible for patent protection,and is not the specific examination criteria to determine the novelty,inventiveness and practical applicability.

6.1 Only Product Can Get Patent Protection for Utility Model

According to Article 2.3,patent for utility model can be granted only for products. The products herein shall be objects manufactured by industrial methods,having definite shape and structure,and occupying a certain space.

All the processes and the objects which exist naturally and are not made by man are not the subject matter protected by the patent for utility model.

The processes referred to above include the manufacturing processes,methods of use,methods of communication,processing methods,computer programs or the method of applying a product to a specific purpose,etc.

For example,a process of manufacturing a kind of gear,a method of dust-eliminating in the workshop,a data processing method and naturally existing Yuhua stones,etc.,shall not be the

subject matters eligible for patent protection for utility model.

An invention-creation may include not only the improvement of the shape and structure of a product, but also the improvement of the specific method, process, and the material of which the product is made. However, the patent for utility model only protects the improved technical solutions relating to the shape or structure of a product.

It shall be noted that:

(1) the claims may include the name of known method to define the shape or structure of a product, and shall exclude the steps or processing conditions of the method. For example, if the name of known method, such as soldering or riveting, is used to define the connection of different parts, the claim does not include the improvement relating to the method per se.

(2) if a claim contains not only the features of shape and structure, but also improvement relating to the method per se, such as technical features defining the method for making or using product, or technical features defining computer program, it does not belong to the subject matter eligible for patent protection for utility model. For example, a kind of wood toothpick, whose main part is cylindrical and whose end parts are conical, is characterized by processing the said wood toothpick into a predetermined shape, immersing the said wood toothpick in medical bactericide for 5-20 minutes, then taking it out and airing it. Since the claim contains the improvement relating to the method per se, it does not belong to the subject matter eligible for patent protection for utility model.

6.2 Shape and/or Structure of Product

In accordance with Article 2.3, the subject matter of utility model shall include the improvement relating to the shape and/or structure of product.

6.2.1 Shape of Product

The shape of a product refers to certain space-shape possessed by the product, which can be observed from the outside.

The improvement relating to the shape of a product may be the improvement relating to either the three-dimensional shape of the product, such as the improvement of the shape of a cam or

a cutter, or the two-dimensional shape of the product, such as the improvement of the cross-sectional shape of a profiled bar.

As for the product which has a non-fixed-shape, such as the substance or material in gaseous state, liquid state, powder state or particle state, its shape cannot be regarded as the shape feature of a utility model product.

It shall be noted that:

(1) the biological shape or naturally-formed shape cannot be regarded as the shape feature of a product. For example, neither the shape of a miniature tree growing in a potted landscape nor the shape of naturally-formed rockery can be regarded as the shape feature of a product;

(2) a non-fixed shape formed by means of arrangement or stacking cannot be regarded as the shape feature of a product;

(3) a product may have a certain technical feature of nonfixed shape substance, such as the substance in gaseous state, liquid state, powder state or particle state, provided that it is defined by the structure feature of the product. For example, it is permitted to have ethyl alcohol of non-fixed shape included in the technical solution relating to the shape or structure of a thermometer; and

(4) the shape of a product may be a definite space-shape which exists under specific circumstances, such as an ice-made cup with a certain novel shape, or a parachute, etc. Again, for example, a kind of steel band packing case for transporting and storing the steel band, which consists of internal steel ring, external steel ring, binding band, external protection plate, and waterproof composite paper. However, when it is used to pack the steel band correlatively in accordance with the technical solution, a fixed space-shape will be formed, which is not arbitrary. Such a packing case is the subject matter eligible for patent protection for utility model.

6.2.2 Structure of Product

The structure of a product refers to the arrangement, organization and correlation of each part of a product.

The structure of a product may be either the mechanical structure or the circuit structure. The mechanical structure refers to the relative position relationship, coupling relationship, and

necessary mechanical matching relationship and so on of the components or parts of which the product consists. The circuit structure refers to the fixed connection relationship amongst the components or elements devices of which the product consists.

The composite layer may be regarded as the structure of the product. Carburized layer, oxide layer and so on of a product belong to the structure of the composite layer.

The molecular structure, component and metallographic structure of a substance do not belong to the structure of the product protected by a patent for utility model. For example, a welding rod which has only a change in the composition of soldering paste is not the subject matter eligible for patent protection for utility model.

It shall be noted that:

(1) the claims may include the names of known materials.

The use of material known in the prior art in the product which has its own shape and structure, for example, composite floor boards, plastic cup, heart catheter holder made of alloy with memory, is not improvement relating to the material per se.

(2) If the claim contains not only the features of shape and structure, but improvement relating to the material per se as well, it is not the subject matter eligible for patent protection for utility model. For example, a rhombic tablet, which is characterized in that the tablet comprises 20% of component A, 40% of component B, and 40% of component C. Since the claim contains the improvement relating to the material per se, it is not the subject matter eligible for patent protection for utility model.

6.3 Technical Solution

The technical solution provided in Article 2.3 refers to the collection of technical means that are adopted to solve a technical problem in observance of the laws of nature. The technical means is usually embodied by technical features.

Solutions that do not use technical means to resolve technical problems and to achieve technical effect in conformity with the laws of nature are not the subject matter eligible for patent protection for utility model.

If the new solution consisting of the shape of a product or of the pattern, color, or the combination thereof in the appearance

of a product does not solve any technical problem, it is not the subject matter eligible for patent protection for utility model. The new solution consisting of character, symbol, chart or the combination thereof in the appearance of a product is not the subject matter eligible for patent protection for utility model. For example, a keyboard of computer or mobile phone with changed characters and symbols in its appearance; can opener with the shapes of twelve animals representing the twelve Earthly Branches, used to symbolize the year in which a person is born; chess or cards and their like, of which the distinguishing features are just in their pattern design, like ancient poetry cards, and so on.

7. Examination of Application Documents

7.1 Request

The provisions in Chapter 1, Section 4.1 of this Part shall apply.

7.2 Description

In the preliminary examination, the description shall be examined whether or not it is obviously not in conformity with Article 26.3 and Rule 17.1-17.3. For examination relating to Article 26.3, the provisions in Chapter 2, Section 2.1 of Part II of these Guidelines shall apply.

The examination of the description includes the following:

Art.26.3

(1) the description shall set forth the utility model in a manner sufficiently clear and complete so as to enable a person skilled in the art to carry it out, which means that such person can carry out the technical solution of the utility model, solve the technical problem and achieve the expected technical effects according to the contents of the description;

Rule 17.1 & 2

(2) the description shall state the title of the utility model, which shall be the same as that appearing in the request. The description shall include the technical field, background art, contents of the utility model, description of figures and mode of carrying out the utility model, and the title of each part shall be indicated respectively;

Rule 17.1(3)

(3) in the part of the contents of the utility model, it shall disclose the technical problem to be solved by the utility model, the technical solution adopted to solve the problem, and the advanta-

geous effects of the utility model as compared with the prior art.

The technical problem to be resolved, the technical solution adopted and the advantageous effects shall be mutually compatible, and not contradictory, or irrelevant;

(4) the contents of the utility model described in the description shall be consistent with the relevant technical solutions defined in the claims;

Rule 17.1(4)

(5) the name of each drawing shall be indicated in the description, and a brief explanation of the contents of the drawings shall be presented. Where there is more than one drawing, each of them shall be explained;

Rule 17.1(5)

(6) in the part of the mode of carrying out the utility model, at least one preferential embodiment of the utility model shall be stated, and it shall be described with reference to the drawings;

Rule 17.3

(7) in the description, the standard terms shall be used, the wording shall be clear, the technical terminology adopted shall be accurate to express the technical solution of the utility model. The description shall not contain such references to the claims as "as described in claim xx", nor shall it contain words or sentences for commercial advertising or for belittling other person or products thereof;

(8) the text of the description may contain chemical or mathematical formulae or charts, but no drawings, including flowchart, block diagram, diagram of curves and phase diagram, etc., which may be used as the drawings of the description only;

Rule 40

(9) where the text of the description contains explanation of drawings, but the corresponding drawings are absent, the applicant shall be notified to delete the explanation of drawing from the text of the description, or to supplement the corresponding drawings within the specified time limit. Where the applicant supplements drawings, the date on which the drawings are submitted or mailed to the Patent Office shall be the date of filing, and the examiner shall issue the Notification of Redetermination of Filing date. Where the applicant deletes the explanation of drawings, the original date of filing shall remain; and

(10) the description shall be consecutively numbered in Arabic numerals.

7.3 Drawings

The drawings are a component part of the description. The function of drawings is to supplement the explanation in the text of the description with figures to enable a person to intuitively and visually understand each technical feature and the whole technical solution of the utility model. Therefore, the drawings shall clearly reflect the contents of the utility model.

The drawings shall be examined in accordance with Rules 17.5 and 18. The examination of the drawings shall include the following:

- | | |
|------------|--|
| | (1)no engineering blueprints or photographs shall be used as drawings; |
| Rule 121.1 | (2)the drawings shall be drawn by drawing instruments including computers and in black ink, and the line shall uniformly thick and distinct, free from color and alteration. Frame lines irrelevant to the figures are not allowed around the figures; |
| Rule 18.1 | (3)the figures shall be numbered consecutively in Arabic numerical order as "Fig.1" and "Fig.2", and the number shall be placed right below each figure; |
| Rule 121.3 | (4)figures shall be preferably arranged in an upright position on the paper, one clearly separated from another. When the transverse dimension of the parts obviously exceeds their vertical dimension and they must be horizontally placed, the top of the figure shall be arranged on the left of the paper. When there are two or more figures on one piece of paper, and one is horizontally arranged, the other figures on the same piece of paper shall also be horizontally arranged; |
| | (5)the scale and distinctness of the drawings shall be as such that a reproduction with a linear reduction in size to two-thirds would still enable all details to be clearly distinguished to meet the requirement of copying and scanning; |
| Rule 18.2 | (6)where there are several drawings in one patent application, the reference signs used for the same constituent part (same technical feature or same object) in different figures describing the same mode of carrying out the utility model shall be identical. The reference signs used in the text of the description and in the drawings shall indicate the same constituent part. The reference signs not mentioned in the text of the description shall not appear in the drawings, and the reference signs not used in the drawings shall not be mentioned in the text of the description; |

(7)the drawings shall not contain any other notes,except indispensable words which shall be in Chinese; when necessary,the original words may be indicated in brackets thereafter;

(8)the structure diagram,logic diagram and flowchart shall have necessary words and symbols contained in its frame;

(9)the identical scale shall be adopted in the same figure,an additional figure of partial enlargement may be added in order to make certain part of the figure shown distinctively;

Rule 17.5

(10)the drawings shall contain figures demonstrating the shape,structure or their combination of the product to be protected.They shall not contain only the figures of prior art or figures demonstrating the effect or function of the product,such as graphs of temperature changing; and

Rule 121.2

(11)all the pages of drawings of the description shall be consecutively numbered in Arabic numerals.

7.4 Claims

In the preliminary examination,the claims shall be examined whether they are obviously not in conformity with Article 26.4 and Rules 19-22. For the examination according to Article 26.4,the provisions in Chapter 2,Section 3.2 of Part II of these Guidelines shall apply.

The examination of the claims shall include the following:

Art.26.4

(1)the claims shall be supported by the description and shall define the extent of the patent protection asked for in a clear and concise manner;

Rule 19.1

(2)the claims shall describe the technical features of the utility model;

Rule 20.2&21.1

(3)an independent claim shall outline the technical solution of a utility model. Except where it is required to be expressed in another form,the independent claim shall contain a preamble portion and a characterizing portion. The preamble portion shall indicate the title of the subject matter of the technical solution of the utility model seeking protection,and those necessary technical features which the subject matter of the utility model share with the most related prior art. The characterizing portion shall state,in such words as "characterized in that" or in similar expressions,the technical features of the utility model which distinguish it from the most related prior art;

Rule 20.3&22.1	(4)a dependent claim shall,by additional technical features, further define the claim which it refers to. It shall contain a reference portion and a characterizing portion. The reference portion shall indicate the serial number(s)of the claim(s)referred to, and the title of the subject matter,which is the same as that appearing in the independent claim. The characterizing portion shall state the additional technical features of the utility model;
Rule 21.3	(5)a utility model shall have only one independent claim, which shall precede all of the dependent claims relating to the same utility model;
Rule 26.4	(6)the contents which are stated in the claims but not in the description shall be added to the description;
Rule 19.1	(7)the claims shall not include any feature that does not produce any technical effect;
Art 26.4	(8)the claims generally shall not include any technical features defined by graphics;
Art 26.4	(9)the claims shall avoid using,as far as possible,any feature of function or effect to define the utility model. The characterizing portion shall not state the function of the utility model alone. Only if certain technical feature cannot be defined with the feature of structure,or the technical features are less properly defined with features of structure than with features of function or effect,and the said function and effect have been fully described in the description,it is possible to allow the utility model defined with features of function or effect;
Art.26.4	(10)the claims shall not contain any sentences the technical meaning of which is ambiguous or uncertain; and
Rule 19.1	(11)the claims shall not use any words or sentences irrelevant to the content of technical solution,such as "claiming the right of manufacture or sale of the patent",nor shall use any words or sentences for commercial advertising or belittling other person or product thereof. Moreover,the claims shall be in conformity with the following formality requirements: (1)the full stop shall be used only at the end of each claim. Each claim shall be expressed either in one natural paragraph,or in several lines or sub-paragraphs in one natural paragraph,and only a comma or a semicolon may be used at the end of the line or sub-paragraph. Where necessary,the sequence number may be

- placed before the line or subparagraph;
- (2)no title shall be used in claims;
- Rule 19.2 (3)where there are several claims,they shall be numbered consecutively in Arabic numerals;
- Rule 19.3 (4)the claims may contain chemical or mathematical formulae but no drawings,and no forms in general. They shall not,except where it is absolutely necessary,contain such references to the description or drawings "as described in part... of the description",or "as illustrated in Figure... of the drawings";
- Rule 19.4 (5)in order to facilitate understanding of the technical solution described in the claims,the technical features mentioned in the claims may make reference to the corresponding reference signs in drawings of the description. Such reference signs shall be included after the corresponding technical features and placed in parenthesis. The reference signs shall be the same as those that appear in the drawings of the description;
- Rule 22.2 (6)a dependent claim shall refer only to a previous claim or claims. A multiple dependent claim referring to two or more previous claims shall refer to such claims in the alternative only,and shall not serve as a basis for any other multiple dependent claim, i.e.,the subsequent multiple dependent claims shall not refer to the preceding multiple dependent claims; and
- Rule 121.2 (7)all the pages of claims shall be numbered consecutively in Arabic numerals.

7.5 Abstract

The examination of the abstract shall be conducted in accordance with Rule 23,including the following:

- Rule 23.1 (1)the abstract shall indicate the title and technical field of the utility model,clearly present the technical problems to be solved,the gist and principal use of the technical solution to the problem,especially the technical features which represent the improvement of the shape or structure of the utility model as compared with the prior art. The abstract shall not be written as a commercial advertisement or an introduction of the product of a purely functional nature;
- Rule 23.2 (2)the abstract shall not use the title of the utility model as its title;
- (3)the abstract may contain chemical or mathematical for-

mulae;

(4)the whole text of the abstract shall contain no more than 300 Chinese characters (including punctuation marks); and

(5)the abstract shall contain a figure accompanying the abstract,which is submitted by the applicant and selected from the drawings of the description and can show the technical solution.

Rule 121

7.6 Format Examination of Application Documents for Publication

The provisions in Chapter 1,Section 4.6 of this Part shall apply.

8. Examination in Accordance with Article 33

The applicant may make amendment to his patent application for utility model in accordance with Article 33. However,the amendment to the patent application documents for utility model shall not go beyond the scope described in the initial description and claims.

If the applicant,when amending the application documents, introduces any contents which cannot be directly and unambiguously derived by a person skilled in the art from the initial description and claims,such amendment shall be regarded as having gone beyond the scope described in the initial description and claims.

If the applicant deletes one or more features from an application,it may also lead to go beyond the scope described in the initial description and claims.

If any technical feature which is included in the initial claims but not described in the initial description is introduced into the description and its contents are extended,such amendment shall be regarded as going beyond the scope described in the initial description and claims.

If any technical feature,which is not described in the initial description and claims and cannot be unambiguously determined by virtue of the contents of the initial description drawings,is introduced into the description,such amendment shall be regarded as going beyond the scope described in the initial description and claims.

It shall be noted that:

(1)the correction of obvious mistakes shall not be regarded

as going beyond the scope described in the initial description and claims. "Obvious mistakes" means the incorrect contents which can be clearly judged from the context of the initial description and claims and without any possibility of other explanations or amendments;and

(2)any structure feature,which can be obviously seen from the drawings and has only one possible explanation,may be introduced in- to the description and included in the claims.

In accordance with Rule 51,the applicant may amend the patent application documents for utility model on his own initiative within two months from the date of filing. Besides,the applicant shall amend the application documents on the defects pointed out in the Notification upon receipt of the Office Action or the Notification to Make Rectification from the Patent Office.

Rule 51.2

8.1 Amendment Made by Applicant on His Own Initiative

With regard to the amendment made by the applicant on his own initiative,the examiner shall first examine whether or not the date of amendment is within two months from the filing date. With regard to the amendment made two months later,if the amended documents remove the defects existing in the initial application documents,and have the prospect of being granted the patent right,the amended documents may be accepted. With regard to the amended documents which cannot be accepted,the examiner shall issue the Notification that Amendments Deemed Not to Have Been Submitted.

With regard to the amendment made by the applicant on his own initiative within the two months,the examiner shall examine whether or not the amendment goes beyond the scope described in the initial description and claims. If the amendment goes beyond the scope described in the initial description and claims,the examiner shall issue the Office Action to notify the applicant that the amendment is not in conformity with the provisions of Article 33. If the amendment is still not in conformity with the provisions after the applicant makes observations or rectification,the examiner may make a decision of rejection according to the provisions of Article 33 and Rule 44.

Rule 51.3

8.2 Amendment as Required by the Notification

With regard to the amendment in response to the notification, the examiner shall examine whether or not the amendment goes beyond the scope described in the initial description and claims, and is made as required by the notification. Where the rectified documents submitted by the applicant contain amendments which are not made as required by the notification, if the amendments are in conformity with the provisions of Article 33, the amendments may be deemed to be the amendments made as required by the notification and the application documents amended in this way may be accepted, provided that the defects existing in the initial application documents are eliminated in the amended documents and there is prospect for the application to be granted the patented right. Where the amended documents are not in conformity with the provisions of Rule 51.3, the examiner may issue a notification, state the reason for not accepting the amendment, and invite the applicant to submit an amendment complying with the provisions of Rule 51.3 within the specified time limit. In the meanwhile, it shall be indicated that if the text of amendment submitted by the applicant is still not in conformity with the provisions of Rule 51.3, the examiner will continue examination based on the former application documents without the amendments, which may, for example, lead to a decision of granting patent right or decision of rejection.

If the amendment goes beyond the scope described in the initial description and claims, the examiner shall issue the Office Action to notify the applicant that the amendment is not in conformity with the provisions of Article 33. If the amendment is still not in conformity with the provisions after the applicant makes observations or rectification, the examiner may make a decision of rejection according to the provisions of Article 33 and Rule 44.

8.3 Amendment Made by Examiner Ex Officio

The examiner may make amendments to the obvious clerical mistakes and symbol mistakes in the documents of patent application Ex Officio before he issues a Notification to Grant Patent Right for Utility Model. The contents of such amendment include the following:

- (1) request: amend the omission, error or repetition of names

of the province (autonomous region, the municipality directly under the Central Government), names of the city, postal code and other information in the address of the applicant or contact person;

(2) description: amend the obviously improper title and/or the technical field of the utility model; correct wrong or misused words, symbols and signs, etc.; revise obviously nonstandard terms; add titles missing in each part of the description; and delete unnecessary explanatory notes in the drawings;

(3) claims: correct wrong or misused words, wrong punctuation marks, wrong reference signs, and add parenthesis to reference signs. But any amendment likely to cause the change of the protection scope falls outside the scope of amendment made ex officio; and

(4) abstract: amend the improper contents and obvious errors in the abstract, and specify the abstract drawing.

The amendment made by the examiner ex officio shall be recorded in the documents and be notified to the applicant.

9. Examination in Accordance with Article 31.1

The examination of a patent application for utility model on the obvious lack of unity shall be conducted in accordance with the provisions of Article 31.1 and Rule 34. In the preliminary examination of the utility model, the special technical features are generally determined on the basis of the background art described in the documents of the application.

With regard to the examination of unity, the provisions in Chapter 6, Section 2 of Part II of these Guidelines shall apply.

10. Examination in Accordance with Rule 43

The examination on the divisional application for utility model shall be conducted in accordance with the provisions of Rules 42 and 43. With regard to the examination of divisional application, the provisions in Chapter 1, Section 5.1 of this Part shall apply, and the provisions in Chapter 6, Section 3 of Part II of these Guidelines shall also apply.

11. Examination in Accordance with Article 22.2

In the preliminary examination, the examiner generally does

not determine on search whether a utility model is obviously lack of novelty, but may determine on the information of related prior art or conflicting applications obtained not through search.

However, where an abnormal applications for utility model is involved, such as an application obviously plagiarizing prior art or repeated submission of an application with substantially identical content, the examiner shall judge whether the utility model is obviously lack of novelty depending on the reference document obtained through search or information obtained by other approaches.

With regard to the examination on novelty, the provisions of Chapter 3 of Part II of these Guidelines shall apply.

12. Examination in Accordance with Article 22.4

Practical applicability means that the product of a patent application for utility model must be one which can be made or used in an industry and can produce positive effect.

With regard to the examination on practical applicability, the provisions of Chapter 5 of part II of these Guidelines shall apply.

13. Examination in Accordance with Article 9

In accordance with Article 9.1, for any identical invention-creation, only one patent right shall be granted. In accordance with Article 9.2, where two or more applicants file applications for patent for the identical invention-creation, the patent right shall be granted to the applicant whose application was filed first.

In the preliminary examination, whether or not a patent application for utility model may obtain a patent right according to Article 9 shall not be examined through search in general. However, if the examiner knows that there is an applicant who has filed a patent application for the identical invention-creation, he shall conduct the examination.

With regard to the handling of identical inventions-creations, the provisions in Chapter 3, Section 6 of Part II of these Guidelines shall apply.

14. Examination in Accordance with Article 20.1

In accordance with Article 20.1, where the applicant files abroad a patent application for utility model developed in China,

he shall file it in advance with the Patent Office for confidentiality examination.

In accordance with Rule 8.1, the utility model developed in China refers to a utility model the substantive contents of the technical solution of which was made within the territory of China.

In preliminary examination, where the examiner finds, with justified reasons, that the applicant filed abroad a patent application in violation of above provisions, the examiner shall issue an Office Action regarding the application for utility model with identical contents filed in China. If the observations made by the applicant fail to prove that the application does not fall under the circumstances mentioned above, the examiner may reject the application on the basis of Article 20.1, Article 20.4, and Rule 44.

15. Examination of International Application Entering the National Phase

This section provides explanations and stipulations only for special issues of the international applications for patent protection of utility model entering the national phase (hereinafter referred to as international application). For the issues which are the same as those in national applications, other provisions of this chapter shall apply.

15.1 Determination of the Texts Forming Basis for Examination

15.1.1 Request of Applicant

At the time of entering the national phase, the applicant of an international application shall indicate, in the written entering statement (hereinafter referred to as entering statement), the text which he wishes the Patent Office use for examination.

The examination of the international application in the national phase shall be performed, upon the request of the applicant, on the basis of the text indicated in the written entering statement and other texts submitted in a later stage which meet the relevant requirements.

15.1.2 Text Forming Basis for Examination

The text used as the basis for examination may include:

(1)where the international publication of an international application is in Chinese,the international application as originally filed; where the international publication of an international application is in a foreign language,the Chinese translation of the international application as originally filed;

(2)where the international publication of an international application is in Chinese,the claims as amended and submitted under Article 19 of the Treaty; where the international publication of an international application is in a foreign language,the Chinese translation of the claims as amended and submitted under Article 19 of the Treaty;

(3)where the international publication of an international application is in Chinese,the claims,description and drawings as amended and submitted under Article 34 of the Treaty; where the international publication of an international application is in a foreign language,the Chinese translation of the claims,description and drawings as amended and submitted under Article 34 of the Treaty;

(4)the amended text of the application as submitted under Rules 44 and/or 104;and

(5)the amended text of the application as submitted under Rule 112.1.

The submission of the claims,description and drawings amended under Articles 28 and 41 of the Treaty shall meet the time limit prescribed in the provisions of Rule 112.1.

The texts used as the basis for examination shall be the one indicated in the statement concerning the basis for examination. The statement shall contain indications in the prescribed items of entering statement at the time of entering the national phase,and the complementary indications made by the way of complementary statement within the prescribed time limit after entering national phase. The latter is a complement and a correction to the former.

If the applicant indicates in entering statement that there are elements or parts incorporated by reference in the application documents and the filing date for china has been redetermined in the preliminary examination stage,the elements or parts incorporated by reference shall be considered as part of the application

documents originally submitted. The applicant shall not be permitted to retain the elements or parts incorporated by reference by the means of requesting to amend the international application date for china in the process of examination.

Where,the amendments made in the international phase fail to be indicated as the basis for the examination at the time of entering the national phase,or where the Chinese translation of the amendments is not submitted according to the provisions,it shall not be used as the basis for examination.

15.1.3 Legal Effect of International Application Documents as Originally Filed

Where the international publication of an international application is in a language other than Chinese,the examination shall be conducted according to its Chinese translation. The examiner,generally speaking,need not check the original. Nevertheless,the international application documents as originally filed shall have legal effect and form the legal basis for any amendment to the application documents.

For an international application,the original description and claims indicated in Article 33 refer to the description,claims,and drawings of the international application as originally filed.

15.2 Requirements of Examination

15.2.1 Examination of Application Documents

Provisions of the Patent Law,its Implementing Regulations and the Guidelines shall be applied to the form or content of the application documents,except for the following:

(1)Where there are no redundant words in the name of utility model,the examiner shall not request the applicant to amend or amend them ex officio on the grounds of not complying with the requirements on the number of words in the name as provided for in Chapter 1,Section 4.1.1 of Part I of these Guidelines.

(2)Where there are no unnecessary words or sentences in the abstract,the examiner shall not request the applicant to amend or amend them ex officio on the grounds of not complying with the requirements on the number of words in the abstract as provided for in Rule 23.2.

(3)The examiner shall not request the applicant to amend or

amend ex officio the description on the grounds of not complying with the requirements on the manner, order and subtitle as provided for in Rules 17.1 and 17.2.

15.2.2 Examination of Unity

In the examination, if the examiner finds, in the application documents used as the basis for the examination, there are multiple claimed utility models between which unity does not exist, the following aspects shall be checked:

(1) whether the multiple utility models lacking unity contain any invention-creation which has not been conducted international search or international preliminary examination in the international phase;

(2) whether the multiple utility models lacking unity contain any invention-creation which has been abandoned by the applicant in the international phase (such as an invention abandoned by an applicant in the international phase by restricting certain claims); and

(3) for situations indicated in point (1) or (2), whether the decision of lacking unity made by the international Authority is correct.

Where it is confirmed that the decision made by the International Authority is correct, the examiner shall issue the Notification to Pay Restoration Fee for Unity to notify the applicant to pay the restoration fee for unity within two months. If the applicant fails to pay or pay in full the restoration fee for unity within the prescribed time limit, and fails to delete the utility model(s) lacking unity, the examiner shall issue an Office Action to notify the applicant that the utility model(s) for which an international search has not been conducted shall be deemed to have been withdrawn, and invite the applicant to submit an amended text after deleting such utility model(s). The examiner shall continue the examination based on the text without such utility model(s).

As for the utility model (s) deleted due to failure to pay the restoration fee for unity by the applicant, according to the provisions of Rules 115.2 and 42.1, the applicant shall not request for divisional application (s). Except for the above circumstance, where the international application contains more than two utility models, the applicant may file a divisional application in ac-

cordance with Rule 115.1.

For circumstances where the International Authority has not raised an objection of unity during the search and examination in the international phase, but actually there is a defect of lacking unity in the application, the provision in Section 9 of this chapter of these Guidelines shall apply.

15.2.3 Earlier Application Being Filed in China

If the international application entering national phase requests priority of the previous application which is filed in China or that of a previous international application having entered Chinese national phase, double-patenting may arise. To avoid double-patenting thereof, the provision of Section 13 of this chapter shall apply.

It shall be noted that: if the claim of priority is deemed not to have been made, the previous application may become the prior art or conflicting application which may destroy the novelty of this international application.

15.2.4 Correction of Translation Mistakes

In accordance with the provision of Rule 113, before the Patent Office completes the technical preparation for announcement of a patent right for Utility Model, if the applicant finds there are mistakes in the Chinese translation of the submitted description, claims or texts in drawings, he may request to correct the mistakes. Where the applicant intends to correct the mistakes in the translation, he or it shall file a written request and pay the prescribed fee for the correction of the translation.

Chapter 3 Preliminary Examination of Patent Applications

for Design

1. Introduction

Under Articles 3 and 40, the Patent Office receives and examines the patent application for design. Where it is found after preliminary examination that there is no grounds for rejection of that application, the Patent Office shall make a decision to grant the patent right for design, issue the certificate of patent for design, register and announce it. Therefore, the preliminary examination of an application for design is a necessary procedure after receipt of an application for design and before granting the applicant a patent right for design.

Rule 44.1

The scope of the preliminary examination for an application for design is as follows:

(1) formal examination of the application documents, including whether or not the application contains the application documents as provided for in Article 27.1, and whether or not those documents comply with the provisions of Rules 2, 3.1, 16, 27, 28, 29, 35.3, 51, 52, 119, and 121;

(2) examination on obvious substantive defects of the application documents, including whether or not the application obviously falls under Article 5.1 or 25.1 (6), or is not in conformity with the provisions of Article 18 or 19.1, or is obviously not in conformity with the provisions of Articles 2.4, 23.1, 27.2, 31.2 or 33, and of Rule 43.1, or is not entitled to a patent right in accordance with the provisions of Article 9;

(3) formal examination of other documents, including whether or not other documents and formalities relating to the application are in conformity with the provisions of Articles 24, 29.1, 30, and Rules 6, 15.3, 15.4, 30, 31, 32.1, 33, 36, 42, 43.2, 43.3, 45, 86, 100; and

(4) examination of the relevant fees, including whether or not the relevant fees have been paid in accordance with Rules 93, 95, and 99.

2. Principles of Examination

In the procedure of preliminary examination, the examiner

shall abide by the following principles of examination.

(1) Principle of confidentiality

In the patent application examination and approval proceedings, the examiner shall be obliged to keep secret the patent application documents and other patent application related contents that are not announced, and other information that is not proper to be made known in accordance with the relevant provisions on secrecy.

(2) Principle of written examination

The examiner shall examine on the basis of the written documents submitted by the applicant. The Office Action (including Notification to Make Rectification) and the result of examination shall be sent in written form to notify the applicant. In the preliminary examination procedure, no interview shall be held in principle.

(3) Principle of hearing

Before making a decision of rejection, the examiner shall notify the applicant of the facts, grounds and evidence for rejection, and give the applicant at least one opportunity to make observations and/or amend the application documents. When the examiner makes a decision of rejection, the facts, grounds and evidence for rejection shall have been notified to the applicant, and the decision shall not contain any new facts, grounds and/or evidence.

(4) Principle of procedural economy

Where in conformity with the provisions, the examiner shall improve the efficiency of examination as much as possible, and shorten the examination period. With regard to the application with defects that can be eliminated through rectifications, the examiner shall conduct a comprehensive examination and do his best to point out all the defects in one Notification to Make Rectification. With regard to the application with substantive defects that cannot be eliminated through rectifications, the examiner may only point out the substantive defects in the Office Action without examining the formality defects in the application documents and other documents. With regard to the application with defects that can be eliminated through amending ex officio, the examiner may not issue Notification to Make Rectification.

In addition to complying with the above principles, the examiner

shall notify the applicant of subsequent procedures that can be initiated while making the decision that the application is deemed not to have been filed, the decision that the application is deemed withdrawn, or the decision of rejection.

3. Procedure of Examination

Art.40

3.1 Notification to Grant Patent Right

Where it is found after preliminary examination that there is no grounds for rejection of the application for design, the examiner shall make Notification to Grant Patent Right for Design.

The application for design for which the patent may be granted includes the application which complies with the requirements of the preliminary examination without the necessity of rectification and the application which complies with the requirements of the preliminary examination through rectification.

3.2 Rectification of Application Documents

During the preliminary examination, for a patent application whose application documents have defects that can be eliminated through rectifications, the examiner shall conduct a comprehensive examination and issue Notification to Make Rectification.

Where the defects still exist in the application documents after the applicant makes rectification, the examiner shall issue another Notification to Make Rectification.

Besides the information of the person who receives correspondence and the bibliographic data of the application, Notification to Make Rectification shall include the followings :

- (1) indicate the type and the submission time of the file which the Notification to Make Rectification is aimed at;
- (2) point out the defects existing in the application definitely and concretely, and state the grounds in the Patent Law and its Implementing Regulation;
- (3) explain the oriented opinion of the examiner and the possible suggestions, in order to help the applicant understand the examiner's intention; and
- (4) specify the time limit for response.

3.3 Handling of Obvious Substantive Defects

During the preliminary examination, for a patent application whose application documents have obvious substantive defects that cannot be eliminated through rectifications, the examiner shall issue the Office Action.

Besides the information of the person who receives correspondence

and the bibliographic data of the application,the Office

Action shall include the followings :

(1)indicate the type and the submission time of the file of which the Office Action is aimed at;

(2)point out the defects exist in the application definitely and concretely,state the grounds in the Patent Law and its Implementing Regulations,and analyze the fact that the application documents have obvious substantive defects together with related evidenceif necessary;

(3)indicate the examiner's oriented opinion and grounds in the Patent Law and its Implementing Regulation on which the examiner is intended to reject the patent application; and

(4)specify the time limit for response.

3.4 Response to Notification

The applicant shall,after receiving the Notification to Make Rectification or the Office Action,make rectification or observations within the specified time limit. The applicant shall,when making rectification of the application,submit the rectification and the corresponding replacement sheets of the amended documents. The replacement sheets of the amended application documents shall be in duplicate,while only one copy is required for other documents. The amendment to the application documents shall be made concerning the defects indicated in the notification or Office Action,and shall not go beyond the scope of the disclosure contained in the drawings or photographs filed on the date of filing.

Where the applicant makes no response within the time limit, the examiner shall,depending on the circumstances,issue Notification that Application Deemed to be Withdrawn or other notifications. Where it is difficult for the applicant to make response within the specified time limit due to justified reasons,he may request to extend the time limit. The provisions of Chapter 7, Section 4 of Part V of these Guidelines shall apply when handling the request for extension of the time limit.

Where an application is deemed to have been withdrawn resulting from failure to meet the time limit due to force majeure or other justified reasons,the applicant may,within the prescribed time limit,submit a request to the Patent Office for restoration of the right. The provisions of Chapter 7,Section 6 of Part

V of these Guidelines shall apply when handling the request for restoration of the right.

3.5 Rejection of Applications

Rule 44.2

Where obvious substantive defects exist in the application documents and remain unrectified after the applicant makes observations or amendment upon the examiner's issuance of the Office Action, or where formality defects exist in the application documents and remain unrectified after the applicant makes observations or rectification upon the examiner's issuance of Notification to Make Rectification twice in respect of said defects, the examiner may make a decision of rejection.

The text of the decision of rejection shall include three parts: brief of the case, grounds for rejection, and conclusion. The examination procedure of the rejected application shall be briefly described in the part of brief of the case, namely all of the observations and the summaries of the responses from the applicant, the defects in the application which result in the rejection of the application and the text of the application upon which the rejection is based.

The part of grounds for rejection shall include the facts, grounds and evidence for rejection and the examiner shall follow the below requirements:

(1) choose the provisions correctly. Where the application may be rejected according to different provisions in the Patent Law and its Implementing Regulations, the examiner shall choose the most suitable, leading provision as the main foundation for rejection, and simultaneously indicate the other defects in the application briefly; and

(2) reject the application with compelling facts, grounds and evidence, and shall have notified the applicant of those facts, grounds and evidence, and have already gave the applicant at least one opportunity to make observations and/or amend the application documents.

The examiner shall remark briefly on the argument of the applicant in the part of grounds for rejection.

The corresponding provisions of the Patent Law and its Implementing Regulations which the patent application is contravening shall be clearly indicated in the part of conclusion with a

statement that the patent application is rejected in accordance with Rule 44.2.

3.6 Interlocutory Examination and Handling after Reexamination

Where an application is rejected for not in conformity with the provisions of the Patent Law and its Implementing Regulations, the applicant may, within the prescribed time limit, file a reexamination request with the Patent Reexamination Board if he is not satisfied with the decision of rejection. For the interlocutory examination for the reexamination request and the handling after reexamination, the provisions of Chapter 8, Section 8 of Part II of these Guidelines shall apply.

4. Examination of Application Documents

Article 27 provides that, where an application for a patent for design is filed, a request, drawings or photographs of the design as well as a brief explanation of the design, etc. shall be submitted; the relevant drawings or photographs submitted by applicant shall clearly indicate the design of the product for which patent protection is sought.

4.1 Request

4.1.1 Name of Product Incorporating Design

Rule 16

The name of the product incorporating the design may explain the category of the product as shown in the drawings or photographs. The name of the product incorporating the design shall be in accordance with the design as shown in the drawings or photographs and indicate the design for which protection is sought accurately and concisely. The name of the product shall generally be in conformity with the name listed in the subclass of the International Classification for Industrial Design. It shall generally contain no more than 20 Chinese characters.

The use of the following names shall generally be avoided:

- (1) names of product containing the name of a person, a place, a nation, an entity, a trademark, a code, a model or a historical age;
- (2) improper generic or abstract names, such as "stationery", "cooking utensils", "musical instruments", "articles for building",

etc.;

(3) names describing the internal structure, technical effect of the product, such as “oil-saving engine”, “human body height-increasing shoe-pad”, “automobile with new type of engine”, etc.;

(4) names with specification, size, scale or numerical unit of the product, such as “21-inch TV set”, “medium-sized bookshelf”, “one pair of gloves”, etc.; and

(5) names in foreign language or without specific meaning in Chinese language, such as “kelaisi wine bottle”, but words well known and having specific meaning can be used, such as “DVD player”, “LED light”, “USB line concentrator”, etc.

4.1.2 Creator

The provisions concerning the inventor of Chapter 1, Section 4.1.2 of this Part shall apply.

4.1.3 Applicant

The provisions of Chapter 1, Section 4.1.3 of this Part shall apply.

4.1.4 Contact Person

The provisions of Chapter 1, Section 4.1.4 of this Part shall apply.

4.1.5 Representative

The provisions of Chapter 1, Section 4.1.5 of this Part shall apply.

4.1.6 Patent Agency and Patent Agent

The provisions of Chapter 1, Section 4.1.6 of this Part shall apply.

4.1.7 Address

The provisions of Chapter 1, Section 4.1.7 of this Part shall apply.

4.2 Drawings or Photographs

Article 59.2 provides that, the extent of protection of the

patent right for design shall be determined by the design of the product as shown in the drawings or photographs. The brief explanation may be used to interpret the design of the product as shown in the drawings or photographs. Article 27.2 provides that, the relevant drawings or photographs submitted by applicant shall clearly indicate the design of the product for which patent protection is sought.

So far as the product with a three-dimensional design is concerned, if the essential features of the design of the product involve six sides, the applicant shall submit orthographic projection of six-side views; if the essential features of the design of the product involve the view of one side or several sides only, the applicant shall submit at least orthographic projection view and space diagram of the side concerned, and indicate the reason of the omission of the view in the brief explanation.

So far as the product with plane design is concerned, if the essential features of the design of the product involve the view of one side only, the applicant may submit the orthographic projection view of the relevant side only; if the essential features of the design of the product involve the view of two sides, the applicant shall submit the orthographic projection views of the two relevant sides.

The applicant shall also submit, if necessary, the exploded view, cutaway view, sectional view, enlarged view and view of state of variation.

In addition, the applicant may submit the reference views. Reference views are usually used to indicate the purpose of use, method or places of use of the product incorporating the design.

The colour includes black-white-grey series and multicolour series. Where an application for design has a declaration "seeking concurrent protection of colour" in the brief explanation, the colour of the drawings shall be fast and not easy to fade.

4.2.1 Titles of Views and Marking Thereof

The titles of the six-side views are front view, back view, left view, right view, top view and bottom view. The side corresponding to the front view shall be the side which faces consumers when in use or which can best show the overall design of the product. For example, the front view of a cup with a handle shall

be the one where the handle is on the edge of the side.

The title of each view shall be indicated exactly under the relevant view.

In respect of the product in set, Arabic numerals shall be marked before the titles of the views of each product with the word "item" placed before the numerals. For example, the title of the front view of the No.4 item in the product set is "Item 4, Front View".

In respect of two or more similar designs for the same product in one application, Arabic numerals shall be marked before the titles of the views of each product with the word "design" placed before the numerals. For example, the title of the front view of the No.1 design in the application is "Design 1, Front View".

Combination product refers to a single product consisting of a number of components. It could be divided into assembled product with only one option of assembly, combination product needless of assembly or assembled product with more than one option of assembly. In respect of the assembled product with only one option of assembly, views showing the state of combination shall be submitted; in respect of the combination product needless of assembly or assembled product with more than one option of assembly, views showing each component shall be submitted, and Arabic numerals shall be marked before the titles of the views of each component with the word "component" placed before the numerals. For example, the title of the left view of the No.3 component of the combination product is "Component 3, Left View".

In respect of the product incorporating design with variations, the Arabic numbers shall be marked after the title of the view showing the state of variation in the patent application thereof.

4.2.2 Making of Drawings

Rule 121.1

The drawings shall be made in accordance with the provisions on normal projection, width of lines, and section mark of the state standards of technical drawing and mechanical drawing. Solid lines of even thickness shall be used to show the shape of the design. Shadow lines, indicative lines, dotted lines, central

lines, size lines, and dot-dash lines shall not be used to show the shape of a design. Two parallel double-dotted lines or natural geosutures can be used to show the omitted part of a long and thin product. The indicative lines may be used to show the section place and direction, enlarged parts, and transparent parts without unnecessary lines and marks. The drawings shall show the design clearly.

The drawing may be drawn with the aid of drawing instruments including computer. Pencil, crayon or ball-pen shall not be used. Blueprint, sketching, mimeograph shall also not be used. Where the drawing of the design is made with computer, its resolution shall meet the requirements of being distinct.

4.2.3 Taking of Photographs

(1) The photographs shall be clear, and avoid vagueness resulting from focusing problems, etc.

(2) The background of the photographs shall be plain, and avoid showing other contents except the product incorporating the design. The product and the background shall have appropriate distinction in brightness to show the design clearly.

(3) The photographs shall be taken in conformity with the rules of exact projection and avoid distortion caused by perspective.

(4) The photographs shall avoid strong light, blinking, shadow, reflection, etc.

(5) The product in the photographs should not be allowed to indicate generally accompanied with additional inside filling or liner, unless the additional inside filling or liner must be kept in order to show the design clearly.

Art.27.2

4.2.4 Defects of Drawings or Photographs

Where the content of the drawings or photographs of a patent application has defects, the examiner shall issue Notification to Make Rectification or Office Action to the applicant. The amendments to the application for design made by the applicant shall not go beyond the scope of the disclosure as shown in the initial drawings or photographs according to the provisions of Article 33. The defects mentioned above mainly refer to the followings:

(1) where the relation of projection of the views is wrong,

for example, the relation of projection is not in conformity with the rules of exact projection, corresponding projection relation among the views lacks, or the direction of the view is upside down;

(2) where the content of the design cannot be correctly expressed because the drawings or photographs are not clear enough, or the size of the figure of product as shown in the drawings or photographs is too small, or there is strong light, blinking, shadow, reflection, inside filling or liner which makes the design indicated incorrectly though the figure is clear;

(3) where, in the drawings of the design, there are lines to show the product which shall be deleted or amended, such as a shadow line, indicative line, dotted line, central line, dimension line, or dot-dash line, and so on;

(4) where the views of a three-dimensional product has any of the following circumstances:

(i) the scale of the various views is not the same; and

(ii) where the essential features of the design of the product involve six sides, there are no six-sided views, however, with the following exceptions:

the back view may be omitted if it is identical or symmetrical with the front view;

the left view (or the right view) may be omitted if it is identical or symmetrical with the right view (or the left view);

the top view (or the bottom view) may be omitted if it is identical or symmetrical with the bottom view (or the top view);

the bottom view may be omitted in the case of the large scale apparatus, or apparatus with fixed position or the articles with bottoms not often be seen;

(5) where the view of a product with plane design has any of the following circumstances:

(i) the scale of various views is not the same; and

(ii) the essential features of the design of the product involve two sides, but there are no two-sided views, except that the back view is identical or symmetrical with the front view or there is no pattern in back view;

(6) where, in the case of a long and thin product, such as the measuring rule or section bar, the middle part of the product is omitted in the drawing, but the double parallel two-dot dash

lines or natural geosutures are not used;

(7)where the section and the section surface of the sectional view or sectional surface view has any of the following circumstances:

(i)no section line or the section line is incomplete; and
(ii)the line,symbol and direction showing the place of section are incomplete or absent (however,it is not necessary to indicate the mark to show the cut-off from the central part).

(8)where there is an enlarged view of a certain part but the position of that enlarged part in the relevant drawing is not indicated;

(9)where an assembled product with only one option of assembly lacks the corresponding views showing the state of combination; a combination product needless of assembly or an assembled product with more than one option of assembly lacks necessary views of each component; and

(10)where the outer layer and inner layer of the design of transparent articles have two or more shapes,patterns and colours that are not expressed separately.

4.3 Brief Explanation

Article 59.2 provides that,the extent of protection of the patent right for design shall be determined by the design of the product as shown in the drawings or photographs. The brief explanation may be used to interpret the design of the product as shown in the drawings or photographs.

According to Rule 28,a brief explanation shall include the following contents:

(1)the title of the product incorporating the design. The title of the product indicated in the brief explanation shall be in accordance with the title of the product in the request;

(2)the use of the product incorporating the design. The use of the product which is helpful to ascertain the classification shall be indicated in the brief explanation. As regards product has multiple uses,the multiple uses shall be indicated in the brief explanation;

(3)the essential features of the design. The essential features mean that the shape,pattern or their combination,or the combination of the colour with shape or pattern,or the position, which is different from prior design. The description of the essential

features shall be compendious;and

(4)which drawing or photograph is designated to best show the essential features of the design. The designated drawing or photograph is used for the publication in the Patent Gazette.

Furthermore,the following contents shall be indicated in the brief explanation:

(1)protection for colour is claimed or a view is omitted.

Where protection for colour is sought in a design patent application, it shall be claimed in the brief explanation.

Where a view of the product incorporating the design is omitted, the applicant shall generally indicate the reason of the omission of the view,such as a view is omitted because it is symmetrical or identical with another view; if it is hard to indicate the reason,may only indicate the view which is omitted,for example, a large-scale apparatus lacks bottom view,it may be described as "bottom view is omitted".

(2)where an application for a patent for design is filed relating to several similar designs of the same product,one of the designs shall be designated as the main design in the brief explanation.

(3)as regards plane product such as printed cloth,wallpaper, shall describe the unit pattern of the plane product which is connected in two sides or four sides and has no fixed limits if necessary.

(4)as regards a long and thin product,shall indicate the length is omitted in the drawings or photographs if necessary.

(5)where the product incorporating the design is made of transparent material or new material which creates special visual effect,it shall be indicated in the brief explanation if necessary.

(6)where the design product is a product in set,the names of the items in the product set shall be indicated if necessary.

The brief explanation shall contain no language of commercial advertisement,and shall not be used to show the function of the product.

5. Examination of Other Documents and Relevant Formalities

5.1 Appointment of Patent Agency

The provisions of Chapter 1,Section 6.1 of this Part shall apply.

5.2 Claiming Right of Priority

Where the applicant claims priority, the provisions of Articles 29.1 and 30, Rules 31 and 32.1, and the relevant provisions of the Paris Convention shall apply.

In accordance with Article 29.1, only foreign priority may be claimed for a patent application for design, that is, where, within six months from the date on which any applicant first filed in a foreign country a patent application for design, if he files in China a patent application for the same subject matter, he may, in accordance with any agreement concluded between said foreign country and China, or in accordance with any international treaty to which both countries are party, or on the basis of the principle of mutual recognition of the right of priority, enjoy a right of priority.

According to Rule 31.4, where the applicant of an application for a patent for design claims a foreign priority, if the earlier application does not include any brief explanation of the design, and if the brief explanation filed by the applicant in accordance with the provision of Rule 28 of these Implementing Regulations does not go beyond the extent of protection determined by the drawings or photographs of the earlier application documents, the priority will not be affected.

In accordance with Rule 32.1, the applicant may claim one or multiple priorities in one patent application for design. During the preliminary examination of an application claiming multiple priorities, each priority shall be examined for its compliance with the relevant provisions of this Chapter.

5.2.1 Earlier Application and Subsequent Application Claiming Priority

The provisions of Chapter 1, Section 6.2.1.1 of this Part shall apply.

5.2.2 Declaration of Claiming Priority

The provisions of Chapter 1, Section 6.2.1.2 of this Part shall apply.

5.2.3 Copy of Earlier Application Document

The provisions of Chapter 1, Section 6.2.1.3 of this Part shall apply.

5.2.4 Applicant of Subsequent Application

The provisions of Chapter 1,Section 6.2.1.4 of this Part shall apply.

5.2.5 Withdrawal of Claim to the Right of Priority

The provisions of Chapter 1,Section 6.2.3 of this Part shall apply.

5.2.6 Fee for Claiming Priority

The provisions of Chapter 1,Section 6.2.4 of this Part shall apply.

5.2.7 Restoration of Claim to the Right of Priority

The provisions of Chapter 1,Section 6.2.5 of this Part shall apply.

5.3 Non-Prejudicial Disclosures

The provisions of Chapter 1,Section 6.3 of this Part shall apply.

5.4 Declaration of Withdrawing Patent Application

The provisions of Chapter 1,Section 6.6 of this Part shall apply.

5.5 Changes in Bibliographic Data

The provisions of Chapter 1 ,Section 6.7 of this Part shall apply.

6. Examination According to Article 5.1 and Article 25.1(6)

6.1 Examination According to Article 5.1

Article 5.1 provides that no patent right shall be granted for any invention-creation that is contrary to the laws or social morality or that is detrimental to public interest.

The examiner shall,according to the relevant provisions of Chapter 1,Section 3 of Part II of these Guidelines,examine whether or not the design applying for a patent is obviously contrary to the laws,whether or not it is obviously contrary to social

morality, and whether or not it is obviously detrimental to public interest.

6.1.1 Contrary to the Laws

To be "contrary to the laws" refers to that the contents of a patent application for design have violated the laws formulated and promulgated by the National People's Congress or the Standing Committee of the National People's Congress according to the legislative procedure.

For example, a design of the bed sheet containing the pattern of Renminbi shall not be granted the patent right because it is contrary to the Law of the People's Republic of China on the People's Bank of China.

6.1.2 Contrary to Social Morality

The social morality refers to ethic or moral concepts and standards of behavior generally believed to be appropriate and accepted by the public. Based on a given cultural background, what the social morality covers constantly changes with the progression of time and the progress of the society, and varies in different regions. The social morality mentioned in the Patent Law of China is limited in China. For example, designs containing drawings or photographs of violence, murder, and pornography shall not be granted the patent right.

6.1.3 Detrimental to Public Interest

To be "detrimental to public interest" refers to that the exploitation or use of the design may harm the interests of the public or society, or may affect the normal order of the State and society.

Where the words or patterns of the design in a patent application relate to a major national political, economical or cultural event, or religious belief and consequently is detrimental to public interest, hurts the feeling of the people or the nation, propagates feudalism and superstition, or cause detrimental political impact, no patent right shall be granted to that application.

A design containing a famous building (e.g., the Tian'anmen Gate) or the portrait of a national leader shall not be granted the patent right.

Any design that takes Chinese national flag or Chinese national

emblem as the pattern shall not be granted the patent right.

6.2 Examination According to Article 25.1(6)

Article 25.1 (6) provides that, for designs of two-dimensional printing goods, made of patterns, colours or their combination, which serve mainly as indicators, no patent right shall be granted. According to the provision of Rule 44.1(3), whether or not any application for a patent for design obviously falls under Article 25.1(6) of the Patent Law shall be examined during the preliminary examination of the design patent application.

Where an application for a patent for design meets the following three requirements, the application falls under Article 25.

1(6) and no patent right shall be granted:

- (1) the product for which the design is applied is a plane printed matter;
- (2) the design is made of patterns, colours, or their combination;
- and
- (3) the design serves mainly as indicator.

When examining the design patent application according to the mentioned provisions above, the examiner shall first examine, based on the drawings or photographs and the brief explanation, whether the product incorporating the design is a plane printing goods. Secondly, the examiner shall examine whether the design is made of patterns, colours, or their combination. As the shape element is not considered, thus, designs of all the two-dimensional printing goods may be deemed as designs made of patterns, colours, or their combination. Thirdly, the examiner shall examine whether the design serves mainly as indicator. "Serve mainly as indicators" means that the main purpose of the design is to help the public identify the related product, the origin of the service, etc.

Wallpapers, textiles are not the subject-matters that excluded by this provision.

7. Examination According to Article 2.4

In accordance with the provisions of Article 2.4, "design" in the Patent Law means any new design of the shape, the pattern or their combination, and the combination of the colour with

shape or pattern, of a product, which creates an aesthetic feeling and is fit for industrial application.

7.1 The Carrier of a Design Must be a Product

A design is the design of a product. The carrier of a design must be a product. Handicrafts, agricultural products, livestock products or natural products, which cannot be produced repeatedly, shall not be the carrier of the design.

7.2 Shape, Pattern, or Their Combination, Combination of Colour with Shape and/or Pattern

What constitute a design are the design elements or their combination of a product, including the shape, the pattern or their combination and the combination of the colour with shape or pattern. The colour of a product alone cannot constitute a design unless the change of the colour of a product constitutes a pattern. The combinations that may constitute a design include: the shape of a product; the pattern of a product; the shape and pattern of a product; the shape and colour of a product; the pattern and colour of a product; the shape, pattern and colour of a product.

"Shape" refers to the design of the molding of a product, that is, the external outline of a product presented by the move, change or combination of the dot, line or side of the external part of the product. That is the result of the synchronal design, manufacture of the structure, external shape and so on of a product.

"Pattern" refers to the figure constituted on the surface of the product by means of the arrangement or combination of the line, character, symbol or colour piece. Pattern may be created by drawing or other means which is able to embody the designing conception of the creator. The pattern of a product shall be permanent and visible, and not flickering or visible only under specific conditions.

"Colour" refers to the colour or combination of colours applied on the product. The natural colour of the raw material appeared on a product is not the colour of the design.

The three elements, that is, shape, pattern and colour are inter-dependent, and sometimes it is difficult to define their boundary. For example, the arrangement of many colour pieces may

constitute a pattern.

7.3 Aesthetic New Design Fit for Industrial Application

To be “fit for industrial application” refers to a design which may be used in industry and may be manufactured in batches.

“Aesthetic” means that when judging whether the subject matter is patentable, the visual sensation of the appearance of the product shall be taken into consideration, but not the function or technical effect of the product.

Article 2.4 is the general definition of a design which may obtain the patent protection. It is not the specific examination standard for determining whether designs are identical or substantive identical. As a result, during the preliminary examination, the examiner normally determines whether the claimed design meets the general requirements of “new design” only on the basis of the contents of the application documents and the common sense of the normal consumers.

7.4 Nonpatentable Situations for Design for Patent

According to Article 2.4, the following situations are ineligible for patent protection for design:

(1) any fixed building, bridge and the like which depends on their specific geographic conditions and cannot be rebuilt elsewhere, such as villa built by a particular lake or hill;

(2) any product which has no fixed shape, pattern or colour because it contains the substance which has no fixed shape, such as gas, liquid or powder;

(3) any component part of the product which cannot be partitioned or sold and used independently, such as the heel of socks, the peak of a hat, the handle of a cup, and so on;

(4) in the case of any product consisting of several component parts which have different shape or pattern, if each component part itself cannot be sold and used independently, such component part is not the subject matter under protection of the patent for design. For example, a jigsaw toy consisting of plug-in pieces of varied shape is a patentable subject matter only when one application relating to all the pieces is filed;

(5) any product which cannot be perceived by the visual sense or be determined with the naked eye, and the shape, pattern

or colour of which has to be distinguished by means of specific instruments,for example,a product whose pattern is only visible under an ultraviolet lamp;

(6)any design for which the protection is sought is not the design of the state of normal product,for example the design of the state of an animal made with a handkerchief;

(7)any design of which the main portion is the original shape,pattern or colour of the natural object,such design normally includes two situations,the natural object itself and the imitational design of the natural object;

(8)any work which belongs wholly to the field of fine arts, penmanship or photography;

(9)any design which is constituted only by geometric shapes or patterns of common sight in the field of the relevant product;

(10)the pronunciations or meanings of the words and numerals shall not be the contents of design protection;and

(11)the pattern shown when the product is electrified,such as the pattern on the electronic watch dial,the pattern on the screen of the mobile phone,software interface,and so on.

8. Examination According to Article 23.1

During the preliminary examination,the examiner usually does not conduct search and normally judges whether the design application obviously does not meet the requirements of Article 23.1 only on the basis of the content of the application document and common sense of the normal consumer.

The examiner,however,may judge whether the design obviously does not meet the requirements of Article 23.1 on the basis of the information,which is not resulted from search,concerning prior design or conflicting application.

When examining design relating to abnormal filing,among other things,obviously plagiarizing prior design or prior application with substantially identical content,the examiner shall judge whether the design obviously does not meet the requirements of Article 23.1 on the basis of prior design document resulted from search or information obtained through other channels.

Examination regarding identical or substantially identical designs shall follow provisions in Chapter 5 of Part IV of these Guidelines.

9. Examination According to Article 31.2

Article 31.2 provides that an application for a patent for design shall be limited to one design. Two or more similar designs for the same product or two or more designs which are incorporated in products belonging to the same class and sold or used in sets may be filed as one application (combination application for short).

9.1 Two or More Similar Designs of the Same Product

Rule 35.1

According to Article 31.2, two or more similar designs for the same product may be filed as one application.

No more than 10 similar designs in one application may be claimed. If more than 10 similar designs in one application have been claimed, the examiner shall issue the Office Action. If the applicant fails to overcome the defect after amendments, the application shall be rejected.

9.1.1 Same Product

According to Article 31.2, each design shall be of the same product, for example, designs of dinner plate. If the designs are for dinner plate, saucer, cup and bowl respectively, though they are under the same class, they do not belong to the same product.

9.1.2 Similar Designs

According to Rule 35.1, the other designs for the product shall be similar to the main design designated in the brief explanation.

Rule 44.1(3)

When judging similarity of designs, the examiner shall compare the other designs with the main design respectively.

When an application involves similar designs during preliminary examination, the application shall be examined whether the design obviously does not meet the requirements of Article 31.2. Normally through overall observation, if the other designs and the main design have same or similar design features, and if the difference between them lies in slight changes in some fine details, usual design of this category of the products, the repeated and continuous arrangement of a design unit or mere change of colour element, they are considered as similar designs.

Rule 44.1(3)

9.2 Designs of Products in Set

According to Rule 35.2, products which belong to the same class and are customarily sold or used at the same time, and the designs of which have the same concept of design, may be filed in one application.

Products in set means that two or more products belonging to the same class, but independent from each other. The design concept for the products are the same. Each product has its own independent value of use while the combination of them reflects collective value of use, for example, a coffee set consisting of coffee cup, coffee pot, milk pot and sugar pot.

9.2.1 Same Class

According to the provisions of Article 31.2 and Rule 35.2, one of the conditions for two or more designs to be filed in one application is that said two or more designs are incorporated in products belonging to the same class, that is, the products belonging to the same class in the International Classification for Industrial Designs.

It shall be noted that products being in the same class is not the only condition for two or more designs being filed in one application, the requirements concerning being sold or used in set and having the same design concept as provided for in Article 31.2 shall also be complied with.

9.2.2 Sold or Used in Set

"Being sold or used at the same time" provided in Rule 35.2 means that the products incorporating the designs are customarily sold or used at the same time and have collective value of use.

(1) Sold at the same time

"Being sold at the same time" means that the products incorporating the designs are customarily sold at the same time, such as the multiple-piece bedding consisting of bedspread, sheet, pillow case and the like. The products which are sold together for the purpose of promotion cannot be filed as a set of products, such as a schoolbag and a pencil box. Although a pencil box will be given as a gift when a schoolbag is sold, they cannot be re-

Art.31.2

garded as having been customarily sold together at the same time and they cannot be filed as a set of products.

(2)Used at the same time

“Used at the same time” means that the products are customarily used at the same time. Namely,when people use one product of the set,they often associate it with the existence of other products of the set. However,it does not necessarily mean use of the products of the set at the same moment,such as the case with coffee cup,coffee pot,sugar pot and milk pot of the coffee utensils.

9.2.3 Various Products Having Same Design Concept

“Same concept of design” refers to the unity of the style of design of each product. That means the design of the shape,pattern or their combination,or the combination of the colour with shape or pattern of each product is unified.

The unity of the shape means that each component product is characterized by a specific molding,or the combination relation between the component products is constituted on the basis of a specific molding. Under such circumstances,the products shall be regarded as being in conformity with the unity of the shape.

The unity of the pattern means that the design of the pattern and its subject matter,composition,form of expression,and so on,of each product shall be unified. If one aspect of them is different, the pattern of the products shall be regarded as not unified. For example,where the subject matter of the design of the coffee pot is orchid,while the subject matter of the design of the coffee cup is a panda,since the selected subject matters of design are different,the patterns are not unified,the principle of unity and coordination is not complied with,and hence,they cannot be filed in one application.

The unity of the colour cannot be considered alone. It must be considered comprehensively with the shape and pattern of each product. Where the shape,pattern of each product complies respectively with the principle of unity and coordination,if the statement of “seeking protection of colour” is not made in the brief explanation,the design concepts are the same; if the statement of “seeking concurrent protection of colour” is made in the

brief explanation, and the style of the colour of the products is unified, the design concepts are the same; if the colour of each component product is quite different and the harmony of the entirety is damaged, the designs shall not be filed in one application.

9.2.4 Products in Set Shall Not Include Similar Designs

Design patent application of products in set shall not include similar designs of one or more products. For example, a design patent application of products in set including dinner cup and saucer shall not involve two or more similar designs related to said cup and saucer.

Where the application is found to be not in conformity with said requirements, the examiner shall issue the Office Action to invite the applicant to make amendments.

9.3 Designs United in One Application Shall Respectively Meet the Requirements for Being Granted a Patent Right

It shall be noted that either two or more similar designs of the same product or a patent application for design in respect of a set of products, each design or design of each product, in addition to compliance with the relevant requirements concerning combination application mentioned above, shall respectively comply with the other requirements of granting. If one design or one design of one product fails to comply with the requirements, the design or the design of the product shall be removed, or the patent application shall not be granted a patent right.

9.4 Examination on Divisional Application

9.4.1 Verification of Divisional Application

The provisions of Chapter 1, Section 5.1.1 of this Part shall apply.

9.4.2 Other Requirements for Divisional Application

(1) Where the initial application contains two or more designs, the design of the divisional application shall be one or more of the designs taken out from the initial application and shall not go beyond the scope of the disclosure as shown in the initial application.

(2)Where the design of the initial application is a design of the whole product,the applicant is not allowed to take only part of the product out of the design as the subject matter of the divisional application. For example,where a patent application is filed to protect the design of a motorcycle as a whole,no divisional application may be made for the design of its spare parts or components.

Where a divisional application is found not to be in conformity with the requirement of item (1),the examiner shall issue the Office Action and invite the applicant to make amendments. Where no response is made within the time limit,the examiner shall issue Notification that Application Deemed to be Withdrawn. Where the applicant refuses to make amendments without sufficient reason,the examiner shall make a decision to reject the divisional application. Where the application is found to be not in conformity with the requirement of item (2),the examiner shall issue the Office Action. If no response is made within the specified time limit,the examiner shall issue Notification that

Application Deemed to be Withdrawn.Where the applicant insists on filing a divisional application without sufficient reason, the examiner shall make a decision to reject the divisional application.

9.4.3 Time Limit and Fees for Divisional Application

The provisions of Chapter 1,Section 5.1.2 of this Part shall apply.

Rule 51.2&.3

10. Examination According to Article 33

In accordance with the provisions of Article 33,the amendment made by the applicant to the patent application for design may not go beyond the scope of the disclosure as shown in the initial drawings or photographs.“The amendment goes beyond the scope of the disclosure as shown in the initial drawings or photographs”means that the design after amendment and the corresponding design disclosed in the initial application documents are not the same.

When judging whether the amendment made by the applicant to his patent application goes beyond the scope of the disclosure as shown in the initial drawings or photographs,if the content after amendment has been shown in the initial drawings or

photographs, or can be determined directly and unambiguously therefrom, the amendment is considered in conformity with Article 33.

The applicant may amend the patent application documents for design on his own initiative within two months from the date of filing. Furthermore, upon the receipt of the Office Action or Notification to Make Rectification the applicant shall amend the patent application documents in response to the defects pointed out in the notification.

Rule 51.2

10.1 Amendment Made by Applicant on His Own Initiative

With regard to the amendment made by the applicant on his own initiative, the examiner shall first examine whether or not the date of amendment is within two months from the filing date. With regard to the amendment made two months later, if the amended documents overcome the defects existing in the initial application documents, and have the prospect of being granted the patent, the amended documents may be accepted. With regard to the amended documents which cannot be accepted, the examiner shall issue Notification that Amendments Deemed Not to Have Been Submitted.

With regard to the amendment made by the applicant on his own initiative within the two months, the examiner shall examine whether or not the amendment goes beyond the scope of the disclosure as shown in the initial drawings or photographs. If the amendment goes beyond the scope of the disclosure as shown in the initial drawings or photographs, the examiner shall issue the Office Action to notify the applicant that the amendment is not in conformity with the provisions of Article 33. If the amendment is still not in conformity with the provisions after the applicant makes observations or rectification, the examiner may make a decision of rejection according to the provisions of Article 33 and Rule 44.2.

Rule 51.3

10.2 Amendment in Response to Defects Pointed Out in Notification

With regard to the amendment in response to defects pointed out in the notification, the examiner shall examine whether or not the amendment goes beyond the scope of the disclosure as shown in the initial drawings or photographs, and whether or not

it is in response to the defects pointed out in the notification. With regard to the amended document filed by the applicant including the amendment not in response to defects pointed out in the notification, if the amendment is in conformity with the provisions of Article 33, and overcomes defect in the original application document and the application has prospect of being granted, the amendment may be considered as the amendment in response to defects pointed out in the notification, the amended application document shall be accepted. If the amendment goes beyond the scope of the disclosure as shown in the initial drawings or photographs, the examiner shall issue the Office Action to notify the applicant that the amendment is not in conformity with the provisions of Article 33. If the amendment is still not in conformity with the provisions after the applicant makes observations or rectification, the examiner may make a decision of rejection according to the provisions of Article 33 and Rule 44.2.

Rule 51.4

10.3 Amendment Made by Examiner Ex Officio

During the preliminary examination, the examiner may amend ex officio the obvious defects in the documents of the patent application mentioned in Sections 4.1, 4.2 and 4.3 of this Chapter, and notify the applicant accordingly. The contents which may be amended ex officio by the examiner mainly refer to the following:

- (1) obvious mistake in the name of the product;
- (2) obvious mistake in the title of the view;
- (3) obvious mistake in the direction of the view;
- (4) the lines describing the product in the drawings include lines which shall be deleted, such as shadow lines, indicating lines, central lines, dimension lines, dotted lines, etc.;
- (5) the descriptions in the brief explanation are obviously not the contents which may be allowed therein. For example, description of the internal structure, description of technical effect, or words concerning promotion and advertising of the product;
- (6) the drawing or photograph in the brief explanation designated by the applicant to best show the essential features of the design is obviously improper; and
- (7) missing, misspelling and repeating of province (autonomous region and municipality), city, postal code and other information

concerning the address of applicant or contact person in the request.

The contents which are amended ex officio by the examiner shall be recorded in the file and be notified to the applicant.

11. Examination According to Article 9

In accordance with Article 9.1, for any identical invention creation, only one patent right shall be granted. According to Article 9.2, where two or more applicants file applications for patent for the identical invention-creation, the patent right shall be granted to the applicant whose application was filed first.

During the preliminary examination of a patent application for design, the examiner normally does not take the initiative to search and examine as to whether or not a patent application for design can be granted the patent right according to the provisions of Article 9. However, where the examiner knows that one or more applicants have filed patent applications for the identical design, the examination shall be conducted.

11.1 Principles of Judgment

In the judgment of whether or not two or more designs constitute “identical invention-creation” stated in Article 9, it shall be determined on the basis of the designs of the products as shown in the drawings or photographs of the two patent applications for design or patents for design. Identical designs mean that the two designs are identical or substantially identical. In respect of the judgment principles of the identical or substantially identical designs, the provisions of Chapter 5 of Part IV of these Guidelines shall apply.

11.2 Method of Handling

The provisions of Chapter 3, Section 6.2 of Part II of these Guidelines shall apply.

12. Classification of Design

The Patent Office uses the International Classification for Industrial Designs (Locarno Classification) to classify patent applications for design. The latest published Chinese version of the International Classification for Industrial Designs is the working

document.

The objectives of design classification is to:

- (1)determine the category of product incorporating the design;
- (2)manage design patents by categories;
- (3)enable search of design patents;and
- (4)compile and publish design patent documents according to sequence of classification number.

Classification of design is working on product incorporating the design. A classification number consists of LOC (version number),Cl. and class number-subclass number (classification numbers referring below are class number-subclass number),for example LOC(9)Cl.06-04. In the case of multiple classification numbers,each classification number is separated by a semicolon, for example LOC(9)Cl.06-04; 23-02.

12.1 Basis of Classification

Classification of design is on the basis of the name of the product,drawings or photographs and the use of the product stated in the brief explanation.

12.2 Methods of Classification

Classification of design normally follows the principle of purpose of use,disregarding the material making the product. The use of the product may be known from name of product, drawings or photographs,intention of use of the product,field of use,method of use and other information provided by the applicant.

Determination of classification shall go by the order of class and then subclass. The classification of a product incorporating design shall belong to a class including its purpose of use and a subclass under the class. If there is no subclass including the purpose of use of the product under the class,the product shall be classified in subclass 99 under the class,namely miscellaneous.

With regard to component of a product,if there is a specific class,it shall be classified in that specific class. For example, tires of automobiles shall be classified into 12-15. If there is no specific class and the component does not belong to other products, it shall be classified into the class to which its higher-hierarchy product belongs to,for example,flint wheel of lighter shall be classified into 27-05. Determining whether there are specific classes for the components of product shall not be limited to

matching with specific product items in the classification table, for example, outer shell of counterfeit money detector shall be classified into 10-07.

With regard to products with new use derived from developments, the product shall remain in the class of its traditional use. For example, lantern, though it has evolved from mere lighting device to ornamental product, it shall still be classified into class 26, lighting devices.

12.3 Determination of the Class and Subclass Numbers

12.3.1 Classification of Product of Single Use

(1) Where a design application includes only a design of one product and the product has a single use, one class and subclass number shall be accorded.

(2) Where a design application includes multiple designs of the same product and the product has a single use, one class and subclass number shall be accorded.

(3) Where a design application includes designs of multiple products and the products have the same and single use. For example, one design patent application includes three pieces of bedding products, pillow case, bedspread and quilt cover, the classification number shall be 06-13.

12.3.2 Classification of Product of Multiple Uses

(1) Where a design application includes a design of one product and the product is a combination of products of two or more different uses, multiple classification numbers consistent with these uses shall be accorded, except for combination of furniture.

For example, a photo frame with a thermometer has two uses in measuring temperature and placing photo, its classification numbers shall be 06-07 and 10-04. Another example, a desk-chair is a combination of furniture, its classification number shall be 06-05.

(2) Where a design application includes multiple designs of the same product and the product is a combination of products of two or more uses, multiple classification numbers consistent with these uses shall be accorded.

(3) Where a design application includes designs of multiple

products and each product has a different use, multiple classification numbers consistent with these uses shall be accorded. For example, a design patent application includes two products in bowl and spoon, its classification numbers shall be 07-01 and 07-03.

12.3.3 Notification to Rectify in Classification Procedure

In accordance with Rule 28, the brief explanation shall state the use of the product incorporating the design.

Where the following circumstances occur during classification procedure, Notification to Rectify shall be issued:

(1) the use of the product cannot be determined according to the name of product, drawings or photographs of the design and there is no statement about the use of the product in the brief explanation or the statement is not clear; and

(2) the use of the product determined from the name of product, drawings or photographs of the design is obviously not in conformity with that stated in the brief explanation.

Applicant shall respond within two months after the receipt of the notification, furnishing the replacement sheet of the brief explanation of the design. The application will be deemed withdrawn where response could not be made after expiry of the above time limit.

Chapter 4 Patent Classification

1. Introduction

The Patent Office adopts the International Patent Classification to conduct the classification for a patent application for invention and a patent application for utility model. The latest Chinese version of the "International Patent Classification(IPC, including the Guide to the IPC)" shall be the working text. Where there is discrepancy in interpretation, the same version of English or French shall prevail.

The purposes of classification are as follows:

(1) establishment of patent application files which are advantageous to patent search;

(2) distribution of patent applications for invention or for utility model to the corresponding examination departments; and

(3) classifying the patent applications for invention or for utility model according to the classification symbols so as to make them published or announced in a systematical way.

This Chapter only involves the classification for patent applications for invention and utility model. The classification for design shall follow the provisions in Chapter 3, Section 12 of this Part.

2. Contents of Classification

When the technical subject of each patent application for invention or utility model is classified, the complete classification symbols which represent the invention information of an invention or a utility model shall be provided. It is desirable that any additional information be classified. The classification symbol which most adequately represents the invention information shall be listed first.

Invention information is technical information in the whole text of a patent application (for example, the claims, description and drawings) that represents contribution to the prior art. The technical information contributing to the prior art means all novel and nonobvious technical information specially disclosed in a patent application.

Additional information does not in itself represent contribution to the prior art, but it might be useful to the search. The additional

information includes the technical information which is identified by the indexing code. The additional information complements the invention information. For example, the components of a composition or mixture, elements or components of a process or structure, or features of use or application of a classified technical subject.

3. Technical Subject

3.1 Category of Technical Subject

Technical subjects of inventions-creations may refer to processes, products, apparatus or materials, including the way these are used or applied. The scope of these technical subjects shall be interpreted in their widest sense.

(1) Processes, such as polymerization, fermentation, separation, shaping, conveying, treating of textiles, transfer and transformation of energy, building, preparation of foodstuffs, testing, methods of operating equipments and ways in which they work, processing and transmitting information.

(2) Products, such as chemical compounds, compositions, fabrics, articles of manufacture.

(3) Apparatus, such as installations used in chemical or physical processes, tools, implements, machines, devices for performing operations.

(4) Materials, such as ingredients of mixtures.

Material includes any substance, intermediate product, or composition for making product. The examples of material are as follows:

[Example 1]

Concrete. Its component materials are cement, sand, rock and water.

[Example 2]

Plywood used for manufacturing furniture. It is a material composed of multiple layers that are of even thickness, in more or less continuous contact with one another, and bonded together.

It shall be noted that an apparatus may be regarded as a product, since it is produced by a process. The term "apparatus" is associated with an intended use or purpose, e.g., apparatus for generating gases, apparatus for cutting. However, the term

“product” is only used to denote the result of a process regardless of the function of the product, e.g., the endproduct of a chemical or manufacturing process. Materials per se may constitute products.

3.2 Determination of Technical Subject

The technical subject shall be determined according to the whole text of a patent application (for example, the claims, description and drawings). When the technical subject is determined on the basis of the claims, the unclaimed technical subject shall also be determined on the basis of the description and drawings.

3.2.1 Circumstances in Which Technical Subject is Determined on the Basis of Claims

Where the technical subject is determined on the basis of the claims, the technical contents described in the claims shall be construed as a whole. For example, when the technical subject is determined by the independent claim, the technical features indicated in the preamble portion shall be combined with the technical features indicated in the characterizing portion.

Furthermore, the contents of the description and drawings shall be combined to correctly construe or clarify the technical features constituting the claimed technical solution indicated in the claims.

(1) Generally, the technical features in the preamble portion of the independent claim shall be the major technical features, while the technical features in the characterizing portion shall be regarded as restriction to the preamble portion.

[Example 1]

A building board used for wall or roof, characterized in that it consists of sheets, each of which is rectangle and comprises four parts, the surface shape of each part is hyperbolic paraboloid.

The technical subject is a sheet building board, used for wall or roof, and characterized in shape.

[Example 2]

A crude oil composition with an improved pour-point which comprises wax-bearing crude oil and an effective amount of pourpoint depressant additive, wherein the additive consists of polymer of ethene and acrylonitrile and tripolymer.

The technical subject is: a crude oil composition characterized in an additive consisting of the polymer of ethene and acrylonitrile and tripolymer.

[Example 3]

A mechanical shock absorber of cotton textile machine, characterized in that viscoelastic materials are stuck on the steel plate so that the two combine as one entire piece.

The technical subject is: a mechanical shock absorber of cotton textile machine with viscoelastic materials stuck on steel plate combined as one entire piece.

[Example 4]

A loudspeaker, the piezoelectric ceramic sheet being connected at one end of the tubular shell by press, and the loudspeaker opening being at the other end, with two metal contacts being on the piezoelectric ceramic sheet, characterized in that a layer of vibration shell is installed on the outside of the loudspeaker shell, being connected with the edge of the loudspeaker opening, and there is an interval between the two shells to comprise a twin shell.

The technical subject is: a piezoelectric ceramic sheet loudspeaker, characterized in twin shell.

[Example 5]

An active dye compound, characterized in that the process of synthesis is by means of enzyme...

The technical subject is: an active dye compound synthesized with the use of enzyme...

(2) Where the subject matter described in the preamble portion of the independent claim has no specific place in the Classification, the determination of the technical subject shall be made mainly on the basis of the technical features described in the characterizing portion, and the technical features described in the preamble portion shall be regarded as the restriction to the characterizing portion.

[Example 1]

A switch, comprises a shell, the control device, wire tunnel, and open/close contact being equipped in the shell cover, characterized in that a light transmitting board made of transparent materials and a glow bulb indicating switch position are equipped under the opening of the shell cover.

The technical subject is: a device of a switch capable of indicating the position of the switch.

[Example 2]

A timing clock comprising of a shell and a cassette mechanism, characterized in that the shell is made of ceramic material, its appearance is...

The technical subject is: the shell of a timing clock made of ceramic material...

3.2.2 Circumstances in Which Technical Subject Can Not Be Determined on the Basis of Claims

Where the technical subject cannot be determined on the basis of the claims, the determination shall be made on the basis of the technical problems solved by the invention or utility model, the technical solutions, technical effects or embodiments described in the description.

3.2.3 Unclaimed Technical Subject to Be Determined on the Basis of Description and Drawings

If the contents of the contribution to the prior art are described in the description and drawings, even though the contents have not been claimed, the technical subject of the contents shall also be determined.

4. Method of Classification

For a patent application, the invention information and additional information related to the technical subject shall be determined first, then the classification symbols corresponding to the invention information and the additional information shall be assigned.

4.1 Classification in Whole

The technical subject shall be classified, as far as possible, as a whole and not by separate classification of constituent parts.

However, if some constituent part of a technical subject represents contribution to the prior art, the constituent part constitutes invention information and shall be classified. For example, when classifying a larger system as a whole, if the parts or components of the system are novel and nonobvious, both the system

and these parts or components shall be classified respectively.

[Example 1]

A tumbler auto-control bridge telescopic slot device consisting of middle girder,elastic sealing element,transverse-joist, supporting spring,transverse-joist sealing box and so on,characterized in that each transverse-joist...

To classify the bridge telescopic slot device as a whole,it is to be classified into E01D 19/06.

If the transverse-joist is novel and nonobvious,it is to be classified into E04C 3/02.

[Example 2]

A solid waste disposal system consists of import device and apparatuses of sorting,smashing,metal retrieving,plastic retrieving, fertilizer making and so on.

To classify the solid waste disposal system as a whole,it is to be classified into B09B3/00.

If the apparatus of smashing is novel and nonobvious,it is also to be classified into B02C 21/00.

4.2 Determination of Function Classification or Application Classification

4.2.1 Classification According to Function

If the technical subject is characterized by the intrinsic nature or function of a thing,and is not limited by a particular field of use,the technical subject shall be classified according to its function.

If the technical subject relates to a particular application,but not specifically disclosed or fully identified,the classification shall be made according to the function if the place of functional classification exists in the Classification or if several applications are broadly mentioned.

[Example 1]

The valves characterized by structural or functional aspects that do not depend on the nature of the particular fluid (e.g., oil)passing therethrough or any system including the valve are classified according to the function and to be classified into F16K.

[Example 2]

The organic chemical compounds characterized by their chemical structure are classified according to function and to be classified into C07.

[Example 3]

A cutting machine with a disk cutter turned around sliding shaft is classified according to its function and to be classified into B26D1/157.

4.2.2 Classification According to Application

If the technical subject is as follows, classification shall be made according to application.

(1) The technical subject concerns a thing which is "specially adapted for" a particular use or purpose.

[Example]

A mechanical valve specially adapted for insertion into a human heart is classified according to its application and to be classified into A61F 2/24.

(2) The technical subject concerns the particular use or application of a thing.

[Example]

Filters specially adapted for cigarette are classified according to their application and to be classified into A24D 3/00.

(3) The technical subject concerns the incorporation of a thing into a larger system.

[Example]

The incorporation of a leaf spring into the suspension of a vehicle wheel is classified according to application and to be classified into B60G 11/02.

4.2.3 Classification According to Both Function and Application

If the technical subject relates both to the intrinsic nature or function of a thing and to its particular use or purpose, or its special application of incorporation into a larger system, the classification shall be made according to both function and application.

If the circumstances mentioned in preceding Sections 4.2.1 and 4.2.2 are not applicable, the technical subject classification is made according to both function and application.

[Example 1]

A coating composition concerns both its ingredient and its

particular use. It is classified not only into the appropriate place of C09D 101/00 to 201/00 according to its function, but also into C09D 5/00 according to its application.

[Example 2]

A leaf spring arranged in the suspension of a vehicle, if the leaf spring itself is novel and nonobvious, is classified into F16F 1/18 according to its function. If the arrangement of the leaf spring in the suspension of a vehicle is also novel and nonobvious, it is also classified into B60G 11/02 according to its application.

4.2.4 Special Circumstances

(1) Where the technical subject should be classified according to function, if there is no such place of functional classification in the Classification, the classification shall be made according to appropriate application.

[Example]

Covering flux stripper for cable.

Since there is no place of functional classification for a covering flux stripper in the Classification, it is to be classified into H02G1/12 according to its application, i.e., mainly for removing insulation or armouring from cable.

(2) Where the technical subject should be classified according to application, if there is no such place of application classification in the Classification, the classification shall be made according to appropriate function.

[Example]

A refrigerator protection device for overload, overvoltage and time delay startup.

If there is no place of application classification for an emergency protective-circuit specially adapted for a refrigerator in the Classification, it is to be classified into subclass H02H according to its function, i.e., an emergency protective-circuit device.

(3) Where the technical subject should be classified according to both function and application, if there is no such place of functional classification in the Classification, it is to be classified only according to application; if there is no such place of application classification in the Classification, it is to be classified only according to function.

[Example]

A generator suited for illumination for animal-drawn cart is equipped with a gear-ratio-adjustable gearbox and can be easily coupled with the wheel.

If there is no place of application classification for a generator specially adapted for illumination for animal-drawn cart in the Classification, it is to be classified in H02K7/116 only according to its function.

4.3 Multiple Classifications

The primary purpose of classification is for search. Multiple classification symbols may be assigned on the basis of the contents of the technical subject.

Where the patent application concerns different categories of subject matters which constitute the invention information, multiple classification shall be made according to the related subject matters. For example, where the subject matters concern a product and its manufacturing process, if there are classification places of the product and process in the Classification, the product and process shall be classified respectively.

Where the technical subject concerns classification according to both function and application, the classification shall be made according to both function and application.

The multiple classification or classification in combination with indexing codes shall also be used as much as possible when the additional information is useful for the search.

4.3.1 Multiple Aspects Classification of Technical Subject

Multiple aspects classification of the technical subject represents a special type of multiple classification. Multiple aspects classification is applied to the technical subject which, by its nature, is characterized by several aspects, for example, by its intrinsic structure and its particular use or function. Classifying of such subject matter according to only one aspect would lead to incomplete search information.

The classification places in the Classification are indicated with note to show the use of multiple aspects classification.

[Example]

G11B 7/24 . record carriers characterized by the selection of the material or by the structure or form

G11B 7/241 . . . characterized by the selection of the material

G11B 7/252 . . . of layers other than recording layers

Note:

In subgroup G11B 7/252,multiple aspects classification is applied, so that if the technical subject is characterized by aspects covered by more than one of its subgroups,the subject matter shall be classified in each of those subgroups.

G11B 7/253 Base layers

G11B 7/254 Protective topcoat layers

When the technical subject concerns both the base layers and protective topcoat layers of layers other than recording layers, the base layers and protective topcoat layers shall be classified into G11B 7/253 and G11B 7/254 respectively.

4.3.2 Secondary Classification

Secondary classification is used for obligatory supplementary classification for the technical subject already classified in other classification places. Examples of such secondary classification are A01P,A61P,A61Q and C12S.

The symbols in secondary classification shall not be used as the first place classification symbols.

4.3.3 Hybrid System and Indexing Code

The hybrid system consists of classification symbols and indexing codes used together with it.

Indexing codes can only be applied in combination with classification symbols. Indexing codes have a format similar to classification symbols but usually use a unique numbering system. The note in the Classification indicates the classification place where the indexing code may be used. Correspondingly,a note,title or heading before the indexing codes indicates with which classification symbols those indexing codes are used.

4.4 Special Classification for Technical Subject

(1)Technical subject may have different classification. If the classification place is not provided for the technical subject of a certain category,the most appropriate technical subject of other category shall be used for classification,see Section 8 of this Chapter for details.

(2) If the classification place adequately covering the technical subject can not be found, the technical subject shall be classified in the special remaining group 99/00.

[Example]

Section A

A99Z 99/00 Subject matter not otherwise provided for in this section.

Section F subclass F02M

F02M 99/00 Subject matter not otherwise provided for in this subclass.

5. Summary of Rules for Classification Places

In some places of the classification, the reference or note indicates how to use priority rules (the first place rule and the last place rule) and special rules. Attention shall be paid to the usage of these classification place rules.

The note is applicable only to the relevant place and its further divided places, and shall prevail over the general rules if it conflicts with the general rules.

6. Classification Steps

The classification is made in order of hierarchy, i.e., section, class, subclass, group and subgroup, until the appropriate group of the lowest level is found.

7. Classification for Patent Applications at Different Publication Levels

7.1 Classification of Unsearched Patent Applications

All claimed subject matter that is potentially novel and unobvious, any potentially novel and unobvious constituents or components of the claimed subject matter, and any unclaimed subject matter in the description and drawings that is potentially novel and unobvious shall be classified as invention information.

It is desirable to classify or index all the claimed and nonclaimed additional information if it is useful for search.

7.2 Classification of Searched and Examined Patent Applications

All claimed subject matter that is novel and unobvious, any

novel and unobvious constituents or components of the claimed subject matter, and any unclaimed subject matter in the description and drawings that is novel and unobvious shall be classified as invention information.

It is desirable to classify or index all the claimed and nonclaimed additional information if it is useful for search.

8. Classification of Specific Technical Subject

8.1 Chemical Compounds

When the subject matter concerns a chemical compound per se, e.g., organic, inorganic or macromolecular compound, it shall be classified in section C. When it also concerns a specific field of use, it shall also be classified in the place provided for that field of use, if such field of use constitutes contribution to the prior art. However, where the chemical compound is known and the subject matter concerns only the application of the compound, it shall be classified only in the place covering the field of use.

8.2 Chemical Mixtures or Compositions

When the subject matter concerns a chemical mixture or composition per se, it shall be classified in a place according to its chemical composition, e.g., the glass is classified into C03C, the cements or ceramics are classified into C04B, the compositions of macromolecular compounds are classified into C08L, and the alloys are classified into C22C. If such a place does not exist in the Classification, it shall be classified according to its use or application. If the use or application also constitutes contribution to the prior art, a mixture or composition shall be classified according to both its chemical composition and its use or application. However, when the chemical mixture or composition is known and the subject matter concerns only its use or application, it shall be classified only in the place covering the field of use or application.

8.3 Preparation or Treatment of Compounds

When the subject matter concerns a process of preparation or treatment of a chemical compound, it shall be classified in the place for the process of preparation or treatment of the compound

concerned. If such a place does not exist, it shall be classified in the place of the compound. When the compound resulting from the preparation process is also novel, the compound shall also be classified. Subject matter concerned with general processes for the preparation, or treatment, of a plurality of compounds shall be classified in the place for the processes employed.

8.4 Apparatus or Processes

When the subject matter concerns an apparatus, it shall be classified in the place for the apparatus. When such a place does not exist, the apparatus shall be classified in the place for the process performed by that apparatus. When the subject matter concerns a process for making or treatment of products, it shall be classified in the place for the process performed. When such a place does not exist, it shall be classified in the place for the apparatus performing the process. If no place exists for the apparatus performing the process, it shall be classified in the place covering the product.

8.5 Articles of Production

When the subject matter concerns an article, it shall be classified in the place for the article. If no place exists for the article itself, it shall be classified in the appropriate place according to the function performed by the article. If no classification place exists according to the function, the classification shall be made according to the field of use.

8.6 Multistep Processes, Industrial Plants

When the subject matter concerns a multistep process or an industrial plant that consists, respectively, of a combination of process steps or apparatus, it shall be classified as a whole, i.e., in a place provided for such combination, e.g., subclass B09B. If no such place exists in the Classification, it shall be classified in the place for the product obtained by the process or plant. When the subject matter concerns also an element of the combination, e.g., an individual step of the process or machine of the plant, the element shall also be separately classified.

8.7 Elements, Structural Parts

When the subject matter concerns structural or functional elements or parts of a product or an apparatus, the following rules shall apply.

Elements or parts only applicable to, or specially adapted for, one kind of product or apparatus, shall be classified in the elements or parts places of the product or apparatus. If such places do not exist, these elements or parts shall be classified in the place for the product or apparatus.

Elements or parts applicable to more than one of different kinds of product or apparatus shall be classified in the elements or parts places of more general nature. If such places of more general nature do not exist, these elements or parts shall be classified according to all of the kinds of product or apparatus to which they explicitly apply.

8.8 General Chemical Formula

A general formula is often used to express one or more genus of compound, wherein at least one group of the formula is variable, e.g., "Markush" type compound. When an enormous number of compounds are within the scope of general formula and are separately classifiable in a large number of classification places respectively, only the individual chemical compounds most useful for search shall be classified. If the chemical compounds are specified using a general chemical formula, the following classifying procedure shall be applied:

Step 1: All "fully identified" compounds that are novel and unobvious are classified. A compound is considered to be "fully identified" where:

(1) the structure is given by the exact chemical name or formula, or can be deduced from its preparation from specified reactants, not more than one of which is selected from a list of alternatives; and

(2) the compound is characterized by a physical property, for example, its melting point, or its preparation is described in one embodiment giving practical elements.

Compounds identified only by an empirical formula are not considered to be "fully identified."

Step 2: If no "fully identified" compounds are disclosed, the general formula shall be classified in the most specific groups

that cover all or most of the potential embodiments. The classification of general chemical formula shall be limited to a single or a very small number of groups.

Step 3: In addition to the above classification according to steps 1 and 2, the classification may be made when other compounds within the scope of the general formula are important.

When classification of all the "fully identified" compounds into their most specific classification places would lead to a number of classification symbols (e.g., more than twenty), the classifier may reduce the number of symbols. This may only be done when the classification of the "fully identified" compounds would lead to the assignment of a number of subgroups under a single group at the next hierarchically higher level. Classification of these compounds may then be made in the higher group only. Otherwise, classification of the compounds shall be made in all of the more specific subgroups.

8.9 Combinatorial Libraries

Collections composed of many chemical compounds, biological entities or other substances may be presented in the form of "libraries". The library as a whole shall be classified in an appropriate group in subclass C40B. At the same time, the individual members which are considered "fully identified" shall be classified into the most specific places, e.g., the library of nucleotides as a whole shall be classified into an appropriate group in subclass C40B. At the same time, the "fully identified" nucleotide shall be classified into appropriate places in section C.