

# **GUIDELINES FOR PATENT EXAMINATION**

2010

STATE INTELLECTUAL PROPERTY OFFICE  
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**No. 55**

In accordance with the provisions of Rule 122 of the Implementing Regulations of the Patent Law of the People's Republic of China, the previous Guidelines for Examination, which were promulgated on May 24, 2006 and entered into force on July 1, 2006, are revised. The revised Guidelines for Patent Examination are hereby promulgated and shall enter into force on February 1, 2010.

A handwritten signature in black ink, consisting of stylized Chinese characters, likely representing the Commissioner of the State Intellectual Property Office.

the Commissioner  
January 21, 2010

# Foreword

The State Intellectual Property Office of the People's Republic of China, as the patent administration department under the State Council, commissions the Patent Office of the State Intellectual Property Office (hereinafter the "Patent Office") to accept, examine and grant patent for patent applications. The Patent Office makes decisions on behalf and in the name of the State Intellectual Property Office. The Patent Reexamination Board, set up by the State Intellectual Property Office, is responsible for examining requests for reexamination and requests for invalidation and making decisions accordingly.

In order to ensure objective, impartial, appropriate and timely handling of patent-related applications and requests in compliance with the laws, as pursuant to Rule 122 of the Implementing Regulations of the Patent Law, the State Intellectual Property Office enacts these Guidelines for Patent Examination (hereinafter the "Guidelines"). These Guidelines detail and supplement the provisions of the Patent Law and its Implementing Regulations, and thus serve as bases and standards for the Patent Office and Patent Reexamination Board to refer to and follow in enforcing the relevant laws and regulations. They are also regulations which the related parties shall abide by at each of the aforesaid stages.

These Guidelines are made by revision of the previous version of 2006 in light of practice, in accordance with the Patent Law of the People's Republic of China promulgated on December 27, 2008 and the Implementing Regulations of the Patent Law of the People's Republic of China promulgated on January 9, 2010, and are hereby promulgated as regulations of the State Intellectual Property Office.

## **Editor's Notes**

1. These Guidelines consist of Foreword, Editor's Notes, Table of Contents, Main Text, Index, Explanatory Notes on the Amendment, and Annexes.

2. The main text of these Guidelines comprises the following five parts:

Part I: Preliminary Examination;

Part II: Substantive Examination;

Part III: Examination of International Applications Entering the National Phase;

Part IV: Examination of Requests for Reexamination and for Invalidation; and

Part V: Processing of Patent Applications and Procedural Matters.

Parts I, II, and IV deal with examination of patent applications sequentially. Part III provides for special rules on the examination of international applications entering the national phase. Part V provides common rules applicable to all the procedures.

3. Each Part of the Guidelines is divided into Chapters, each sub-divided into numbered Sections of four levels. For example, in Part II Chapter 3 (Novelty), 2.1.2.2 (Disclosure by Use) is a fourth level Section under Section 2.1.2 (Means of Disclosure) of the third level, which is subordinated to the second level Section 2.1 (Prior Art) that belongs to Section 2 (Concept of Novelty) of the first level.

4. The Table of Contents includes an outline contents to the chapter level, and a detailed contents to the lowest section level. A reader may first consult the outline contents to find the relevant chapter and then look for the exact position in the detailed contents.

5.For ease of understanding and reference, in the left side to the text of the Guidelines, marginal references to the applicable provisions of laws and regulations are also provided.When reading the Guidelines, a reader may easily find the full text of the relevant provisions with the aid of these references.

6.Unless otherwise indicated, references in the Guidelines to “the Patent Law” are to the Patent Law of the People’s Republic of China, to “the Implementing Regulations” are to the Implementing Regulations of the Patent Law of the People’s Republic of China, to “Articles” are to those of the Patent Law, and to “Rules” are to those of the Implementing Regulations.

7.Whenever “he” is used in relation to applicant, inventor, patentee, petitioner, examiner, etc., this should be understood as indicating “she” (in case of female), “it” (in case of an entity such as company), or “they” (in case of plural form) where appropriate.The same is true for the possessive and objective cases.

8.This English translation is provided just for information, and the Guidelines in the Chinese language as promulgated shall be the only authentic version.The translators try their best to ensure correct translation.However, omissions and mistakes are expected.In case of any discrepancy or incorrect translation, the Chinese version shall prevail.

9.Those marginal references to the applicable provisions of laws and regulations in the left side to the text of the Guidelines are indicated in the abbreviated form, examples of which are provided in the following:

Art.26	Article 26 of the Patent Law
Art.38 & 39	Articles 38 and 39 of the Patent Law
Art.2,5 & 25	Articles 2,5,and 25 of the Patent Law
Art.31.1	Article 31, Paragraph 1 of the Patent Law
Art.22.2 &.3	Article 22, Paragraphs 2 and 3 of the Patent Law
Art.25.1(1)	Article 25, Paragraph 1, Item (1) of the Patent Law

Rule 1	Rule 1 of the Implementing Regulations
Rule 45	Rule 45 of the Implementing Regulations
Rules 95 & 96	Rules 95 and 96 of the Implementing Regulations
Rules 21-23	Rules 21 to 23 of the Implementing Regulations
Rule 44.1	Rule 44, Paragraph 1 of the Implementing Regulations
Rule 23.1 & 2	Rule 23, Paragraphs 1 and 2 of the Implementing Regulations
Rules 42.2 & 43	Rule 42, Paragraph 2 and Rule 43 of the Implementing Regulations
Rules 21.3 & 23.2	Rule 21, Paragraph 3 and Rule 23, Paragraph 2 of the Implementing Regulations
Rule 33(3)	Rule 33, Item (3) of the Implementing Regulations
Rule 17.1(4)	Rule 17, Paragraph 1, Item (4) of the Implementing Regulations
PCT Art.25	Article 25 of the Patent Cooperation Treaty
PCT Rule 51	Rule 51 of the Regulations under the Patent Cooperation Treaty
PCT Rule 13bis2.3(a)	Rule 13bis2.3, Paragraph (a) of the Regulations under the Patent Cooperation Treaty

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