

Others

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In this index, the place of a term is given in such a way as the following example shows. For example, I . I -6.2.1.2 indicates that the term is in Part I , Chapter 1, Section 6.2.1.2.

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# Explanatory Notes on the Amendment

Since entering into force on July 1, 2006, the Guidelines for Examination (the 2006 version) have played a favorable role in guiding, standardizing, and unifying the practice of patent application and examination. The Decision of the Standing Committee of the Eleventh National People's Congress on amending the Patent Law of the People's Republic of China was adopted at its 6th meeting on December 27, 2008, and the Decision of the State Council on amending the Implementing Regulations of the Patent Law of the People's Republic of China was adopted at its 95th executive meeting on December 30, 2009, (hereinafter the third amendment to the Patent Law and its Implementing Regulations). In order to adapt to the third amendment to the Patent Law and its Implementing Regulations, the Guidelines for Patent Examination was amended by the State Intellectual Property Office, mainly based on the principle of adaptive amendment, concurrently taking account of streamlining the procedure, increasing the efficiency of examination and approval, standardizing the practice of examination and approval.

## **I. Amendment Procedure**

The amendment to the Guidelines for Patent Examination was initiated in November 2008, mainly comprising the following stages:

The first stage (November 4, 2008 to December 5, 2008): early preparations.

The leading group and the working groups for the amendment to the Guidelines for Examination were set up. The leading group was responsible for guiding and approving the amendments to the Guidelines for Examination, and the working groups were responsible for doing ground research, drafting and editing the amendments.

The initiation meeting for the amendment to the Guidelines for Examination was convened on December 4 and December 5, to determine the guiding thoughts, basic principles and working plan for the amendment.

The second stage (December 6, 2008 to March 24, 2009): investigating, and submitting proposals for amendments.

The working groups comprehensively reviewed the contents involved in the third amendment to the Patent Law and its Implementing Regulations; broadly solicited comments and suggestions on the amendments to the Guidelines for Examination within and outside the Office; thoroughly investigated relevant amendments to the Patent law and its Implementing Regulations for the legislative principles; analyzed

the transition of the existing examination standards, and compared relevant domestic and foreign legal provisions; conducted research on the procedure of filing, examination and substantive examination standards involving relevant amendments, and conceived solutions in that regard; proposed specific amending solutions to the relevant amendments taking account of amendment suggestions from the Office or the outside; and drafted suggesting amendments.

The third stage (March 25, 2009 to May 18, 2009): the review by the leading group, drafting and editing by the working groups.

The leading group discussed and reviewed the suggesting amendments, made guiding comments on the relevant procedures of filing and examination in the new legal framework, and gave amendment suggestions on some specific examination standards. According to the review opinions of the leading group, the drafters conducted in-depth study regarding the relevant problems, further improved the suggesting amendments, and finished the draft amendment to the Guidelines for Examination. The editors read and checked the draft amendment thoroughly. During the period of time, many seminars and coordination meetings were held between the working groups and the Legal Affairs Department, between the drafters and examination departments to guarantee the integrity and consistence of relevant amendments. The working groups made several submissions relating to the problems found in the course of editing to the leading group for discussion, and made several modifications to the draft amendment to the Guidelines according to the review opinions of the leading group.

The fourth stage (May 19, 2009 to June 5, 2009): soliciting comments on the draft amendment within or outside the Office.

The working groups solicited comments and suggestions on the final version of amendment produced in the third stage from the examination departments and examiners of the Office; meanwhile, symposia and seminars were convened to explain and discuss the amendment, soliciting comments from relevant departments outside the Office, applicants and patent agents. All together, over 900 pieces of comment and suggestion on the amendment were received.

The fifth stage (June 6, 2009 to July 9, 2009): amending and improving.

The working groups analyzed and researched the comments and suggestions collected in the fourth stage, in combination with the specific amendments; according to the principles for amending, the working groups accepted some of the suggestions, revised and improved the draft amendment. Editors re-edited the improved draft amendment, and submitted the important amendment therein to the leading group for review.

The sixth stage (July 10, 2009 to August 10, 2009): soliciting comments for the second time.

Amendment to the Guidelines for Examination produced in the fifth stage was published on the government website of Legislative Affairs Office of the State Council P.R.China to solicit comments from the public. During the period of time, the working groups received comments and suggestions not only from applicants and patent agents in China, but also from foreign institutions, such as United States Patent and Trademark Office, European Patent Office, etc.

The seventh stage (August 11, 2009 to December 31, 2009): further amending and improving.

Based on the work of soliciting comments from the public in the sixth stage, the amendment to the Guidelines for Patent Examination was further improved according to the amendment suggestions and the draft amendment to the Implementing Regulations. During the period of time, in accordance with the revision of the draft amendment to the Implementing Regulations in the course of amending, editors and drafters worked together, revising the relevant procedure of filing and examination and substantive examination standards for several times, and the leading group reviewed the revision arising therefrom.

The eighth stage (January 2010): approval and promulgation.

The Ordinance No.55 was signed by the Commissioner of the State Intellectual Property Office on January 21, 2010 to promulgate the Guidelines for Patent Examination, and the whole text of it was published on the government website of the State Intellectual Property Office ([www.sipo.gov.cn](http://www.sipo.gov.cn)).

The ninth stage (February 2010): The Guidelines for Patent Examination (the 2010 version) was printed and distributed.

## **II. Major contents of amendment**

The Guidelines for Patent Examination was mainly amended to be adapted to the third amendment to the Patent Law and its Implementing Regulations, and the adaptive amendment mainly involved the following aspects:

1. According to the requirements for genetic resources protection and the disclosure of the source of genetic resources prescribed in the Patent Law and its Implementing Regulations, specific requirements for the patent application developed relying on genetic resources, and examination standards on the disclosure of genetic resources in preliminary examination and substantive examination were added in.

2. With regard to the revision of Article 9 and Rule 41, handling of identical inventions-creations in preliminary examination, substantive examination, and invalidation procedure were amended accordingly.

3. According to Article 20, Rules 8 and 9, where an application for patent is filed abroad regarding an invention or a utility model developed in China, a confidential examination shall be conducted on it. As a result, the confidential examination

procedure for the filing of an application abroad was added in.

4. With regard to the revision of Novelty prescribed in Article 22, the examination standard on novelty and relevant provisions concerning evidence in the invalidation procedure were amended accordingly.

5. According to the revision of granting conditions for design patent in the Patent Law and its Implementing Regulations, the specific examination standard in the preliminary examination regarding relevant granting conditions for design patent, and the specific examination standard in the invalidation procedure regarding the examination in accordance with Article 23 were added in.

6. According to Article 61, Rules 56 and 57, the procedure for receiving and handling of the request for evaluation report of patent and the making of the report were set up, and specific evaluation standard on utility model patent and design patent were introduced.

The amendments made for further streamlining the procedure, increasing efficiency of the patent examination and approval, and standardizing the examination and approval practice mainly involve the following contents:

1. to make applicants feel more convenient, the procedures were simplified as far as possible, and those unfavorable to the applicants and the practice were amended. For example, in the examination of application relating to biological material, the provision that the examiner should issue a Notification to Make Rectification regarding the date of deposit indicated in the certificate was added;

2. the contents relating to the application and examination practice, which tend to arouse confusion or result in the diversion in understanding and practice were amended. For example, examination in accordance with Article 33 and Rule 51 was revised;

3. the contents proved to be feasible and have favorable effect in the examination practice were incorporated into the Guidelines for Examination. For example, the provision relating to the special power of attorney in the invalidation procedure was added;

4. some forward-looking provisions with regard to solving the inconsistency in standard, which may arise in the future examination practice, were introduced to help improving the quality of examination. For example, it was clarified that ex officio examination was permitted in the collegiate examination procedure on request for invalidation; and

5. taking the harmonization with the international practice into consideration, some relevant provisions in the normative documents issued by the State Intellectual Property Office were incorporated into the Guidelines for Examination. For example, the provisions relating to the preliminary and substantive examination of international applications entering the national phase on the items incorporated into

the application by reference were added in.