

Part V

Processing of Patent Applications and Procedural Matters

Chapter 1 Patent Application Documents and Formalities

1.Introduction

An applicant seeking patent protection for an invention-creation shall file an application for patent with the Patent Office in accordance with the provisions of the Patent Law and its Implementing

Regulations. In the procedures of examination and approval of patent application, the applicant shall also go through a variety of matters relating to the patent application in accordance with the Patent Law and its Implementing Regulations or upon the requirements of the examiner. Patent application formalities refer to the filing of a patent application with the Patent Office and the going through of other patent-related matters by the applicant in the procedures of patent examination and approval.

The request, description, claims, drawings and abstract submitted to the Patent Office by the applicant upon filing a patent application in accordance with Article 26 or the request, drawings or photographs, and brief explanation submitted to the Patent

Office by the applicant upon filing a patent application in accordance with Article 27 are referred to as patent application documents. Except for the application documents, all the other requests, statements, observations, rectification and certificates, evidence materials submitted by the applicant (or the patentee), or other parties concerned when going through the various formalities in connection with the application (or the patent) at the time of filing or thereafter are referred to as other documents. When going through the formalities of a patent application, the corresponding documents shall be submitted, and the prescribed fees shall be paid within the prescribed time limits.

Rule 2

2.Form of Filing Patent Application

The formalities of a patent application shall be gone through in either written (on paper) or electronic form.

2.1 Written Form

Where an application is filed in written form and is accepted, the relevant documents shall be submitted in paper form in the procedures of patent examination and approval. Unless otherwise provided, the relevant documents submitted in electronic form shall be deemed not to have been submitted.

The formalities gone through in manners other than in written form, such as in oral form, by phone call or in physical, or by such communication means as telegram, telex, facsimile, Email, etc., shall be deemed not to have been performed, and shall have no legal effect.

2.2 Electronic Form

Unless otherwise provided, where an application is filed in electronic form by an applicant and is accepted, the corresponding documents shall also be submitted in electronic form through the electronic patent application system in patent examination and approval procedures. Where the corresponding document is not in conformity with the provisions of submitting, it shall be deemed not to have been submitted.

3. Applicable Language

Rule 3

3.1 Chinese

Except for certificates or evidence materials provided by foreign government departments or created in foreign countries, the patent application documents and other documents shall be in Chinese.

The examiner shall take the Chinese text of the patent application submitted by the applicant as the basis of examination. The foreign language text of the application submitted by the applicant at the time of filling the application shall serve as a reference for the examiner in the examination procedures and have no legal effect.

3.2 Chinese Characters

The word "Chinese" mentioned in Section 3.1 of this Chapter refers to the Chinese characters. The patent application docu-

ments and other documents shall be written in Chinese, and the words and sentences shall comply with the modern Chinese standard.

The Chinese characters in the simplified writing form published officially shall be used as the standard. The examiner may correct the variant, traditional, or non-standardized simplified forms of the characters in the application documents *ex officio*, or invite the applicant to make the correction.

3.3 Translation of Foreign Languages

Rule 3.1

Where application documents are written in foreign language, they shall be translated into Chinese, in which the scientific and technological terms in foreign language shall be translated into Chinese according to relevant provisions and shall be in standard terms. Where there is no unified translation in Chinese for a scientific and technological term in foreign language, the term may be translated following conventions with the original text shown in bracket following the translation. Measuring units in the description shall adopt the legal measuring units, including SI units and other selected units in China. Where necessary, other measuring units well recognized in the art may be indicated in the parentheses at the same time.

Rule 3.2

When the parties concerned submit the certifying documents and certifying materials (such as documents certifying the right of priority, documents certifying the assignment, etc.) in foreign language, the Chinese translation of the titles thereof shall also be submitted. When necessary, the examiner may invite the parties concerned to submit the Chinese translation of the full text or the abstract thereof within the specified time limit.

Where the translation of the document fails to be submitted within the specified time limit, the said document shall be deemed not to have been submitted.

4. Standard Forms

Standard forms made by the Patent Office shall be used when going through the formalities of patent application (or patent).

The standard forms shall be made, amended and published by the Patent Office according to specified format and style.

Where a document is submitted in non-standard form when going through the patent application (or patent) formalities, the examiner may issue a Notification to Make Rectification or a Notification that Action Deemed Not to Have Been Made concerning the formalities according to relevant provisions.

However, where the submitted rectification or observations are in non-standard form when the applicant replies to the Notification to Make Rectification or Notification of Office Action, the document may be deemed to have met the formal requirements

provided that the application number is clearly written, indication of rectification of application documents is shown, and signatures or seals are consistent with requirements.

4.1 Paper

The paper used for the various documents shall be pliable, sturdy, durable, smooth, lusterless and white, with quality equal to, or better than, that of the 80g offset paper.

4.2 Specification

The specification of the paper used for the description, drawings, claims, abstract, figure accompanying the abstract, drawings or photographs, brief explanation of application for design, and other forms shall be of 297mm × 210mm (A4).

4.3 Margin

For the application documents, there shall be a 25mm margin on the top (if there is a title, from the top of the title to the edge of the page) and on the left of the page respectively, and a 15mm margin on the right and at the bottom from the page number below to the edge of the page respectively.

Rule 121

5. Rules of Writing

5.1 Typewriting or Printing

The request, claims, description, abstract, the text matter of the drawings and the figure accompanying abstract, and brief explanation shall be typewritten or printed. Mathematical and chemical formula in the above-mentioned documents may be handwritten in a way as provided in map-making.

All other documents may be written in hand unless otherwise provided. However, the writing shall be neatly lettered and free from any alteration.

5.2 Typeface and Specification

The Song typeface, imitation Song typeface or regular script shall be used in the various documents. Running hand or other typefaces shall not be used.

The characters shall be 3.5mm to 4.5mm in height, and the

line spacing shall be 2.5mm to 3.5mm.

5.3 Method of Writing

For all the documents, the paper shall be used on one side only and in portrait orientation unless otherwise provided. The documents shall be written from left to right, and not in multiple columns.

One document shall not contain two or more patent applications (or patents), and one page of paper shall not contain two or more kinds of documents (e.g., one page of paper shall not contain both description and claims).

5.4 Contents of Writing

Each item of the documents shall be filled in accurately and detailedly, and the same contents shall be filled in consistently across different items or documents. For example, the address item shall be filled in completely according to the division of the administrative region, and the postal code shall be consistent with the address; the signature or seal of the applicant shall be consistent with that filled in the applicant item.

5.5 Color of Typeface

The typeface shall be in black. The handwriting and printing shall be clear, solid, inerasable, and unfadable and meet the requirements of copying and scanning.

5.6 Numbering

Various documents shall be sequentially numbered with Arabic numerals respectively. The page number shall be in the upper center of the bottom margin of each page.

6. Certifying Documents

The certifying documents which are often used in the procedures of patent application approval include the non-service invention certificate, nationality certificate, habitual residence certificate, certificate of location of registration or habitual business office, certificate of qualification of applicant, certificate of the priority right (copy of the earlier application documents), certificate of assignment of the priority right, certificate of deposit

of biological material sample, certificate of the alternation of the name of the applicant (or patentee) or certificate of the transfer of rights, certificate of date for mailing the document, etc.

The various certifying documents shall be provided by the competent authorities concerned or be signed by the parties concerned. For such documents, the original files shall be provided; where the copy of the certifying documents is provided, it shall be notarized or affirmed by the competent authorities with official seals affixed (except for those original files are affirmed and recorded by the Patent Office).

7. Number of Copies of Document

The patent application documents submitted by applicant shall be in duplicate, one original and one copy. For invention (or utility model) patent application, the request, description, drawings, claims, abstract, and figure accompanying the abstract shall be submitted in duplicate; and for a design patent application, the request, drawings or photographs, and brief explanation shall be submitted in duplicate, with the original text clearly indicated.

Where there is no original indicated by the applicant, the Patent Office shall designate one as the original. Where there are different contents in the two copies, the original one shall prevail.

Unless otherwise provided in the Implementing Regulations of the Patent Law or in these Guidelines and except for the replacement sheet of the application documents, all the other documents submitted to the Patent Office (e.g., the power of attorney, request for substantive examination, statement for change in bibliographic data, contract of assignment) shall be in one copy. Where it is necessary to transfer the documents to other parties concerned, the Patent Office may, as needed, specify the number of copies in the notification.

8. Signature or Seal

Rule 119.1

The patent application documents or other documents submitted to the Patent Office shall be signed or sealed according to relevant provisions. Where an application has not been appointed to patent agency, the application shall be signed or sealed by the applicant, the patentee, other interested parties or their

representatives. Where the formalities concern common rights, all the right owners shall sign or seal; where an application has been appointed to patent agency, the application shall be sealed by the patent agency. If necessary, the application shall also be signed or sealed by the applicant, the patentee, other interested parties or their representatives.

Chapter 2 Patent-Related Fees

1. Time Limit for Payment of Fees

Rule 95

(1) The time limit for the payment of the filing fee is within two months from the filing date or fifteen days from the date of receipt of the notification of acceptance. The fees need to be paid in this period include the fee for claiming priority, additional fee for filing and the printing fee for the publication of a patent application for invention.

The fee for claiming priority refers to the required fee when the applicant claims the right of foreign or domestic priority. Such fee shall be calculated in accordance with the number of the earlier applications that serve as the basis of the priority.

The additional fee for filing an application refers to the required fee when the number of pages of the description (including drawings and sequence listing) of the application documents exceeds 30 or the number of claims exceeds 10. Such fee shall be calculated in accordance with the number of pages of the description or the number of claims.

The printing fee for publication refers to the required fee for the publication of the patent application for invention. Where the filing fee (including the printing fee for publication and the additional fee for filing) is not paid or not paid in full within the prescribed time limit, the application shall be deemed to have been withdrawn. Where the fee for claiming priority is not paid or not paid in full within the prescribed time limit, the claim for right of priority shall be deemed not to have been made.

Art. 35.1
Rule 96

(2) The time limit for paying the substantive examination fee is three years from the date of filing (or from the earliest priority date where right of priority is claimed). This fee applies only to the patent applications for invention.

Rule 99.2

(3) The time limit for paying the fee to request an extension of a time limit shall be due before the date on which the corresponding time limit expires. Such fee shall be calculated according to the length of the extension requested (on a monthly ba-

sis).

Rules 6 & 99.1

(4)The time limit for paying the fee to request the restoration of right shall be due within two months from the date on which the party concerned receives the notification confirming the loss of right issued by the Patent Office.

Art.41.1

Rule 96

(5)The time limit for paying the reexamination fee is three months from the date on which the applicant receives the rejection decision issued by the Patent Office.

Rules 54 & 97

(6)The time limit for paying the registration fee for granting patent right,the annual fee for the year in which the patent right is granted and the printing fee for the announcement of the grant is two months from the date on which the applicant receives the Notification to Grant Patent Right and the Notification to Go through Formalities of Registration issued by the Patent Office.

Rule 98

(7)For the time limit for paying the annual fee and the surcharge, please see Chapter 9,Section 2.2.1 of this Part.

Rule 99

(8)The time limit for paying the fee for a change in the bibliographic data,the fee for requesting patent evaluation report, and the fee for requesting invalidation is one month from the date on which the corresponding request is filed.

Rule 94.1

2.Methods of Payment and Settlement

The fees may be paid directly to the Patent Office (including the local patent receiving agencies),or by postal or bank remittance, or in any other prescribed way.The kinds of fees collected by each local patent receiving agency shall be separately provided for.

Rule 94.2

Where the fees are paid by postal or bank remittance,the correct application number or patent number,and the titles of the fees to be paid shall be indicated on the money order,and the password can not be set.Non-compliance with the aforesaid requirements shall be deemed that the formalities of payment have not been gone through.

The name of the person who remits the payment and the address thereof (including postal code)shall be indicated on the money order.Where there are two or more kinds of fees to be paid for the same application or patent,the title and amount of each fee shall be indicated respectively,and the sum of the a-

amount of each fee shall be equal to the total amount of all the fees to be remitted.

Where the fees for different applications (patents) are remitted in one money order and the total amount of all the fees is less than the sum of the amount of each fee, treatment methods are as follows:

(1) where the remitter marks the sequence numbers on the application numbers (or patent numbers), the fees shall be divided in accordance with the order of labeling; or

(2) where the sequence number is not marked on the application numbers (or patent numbers) by the remitter, the fees shall be divided on the basis of the order from left to right, top to bottom. Where part of the fees are not paid or not paid in full, the payment shall be deemed not to have been made.

Rule 94.3

Where the fees are paid by a party concerned that has no habitual business office or residence in mainland China, the payment shall be made in the designated foreign currency and through a patent agency except as otherwise provided for.

Where the fees are paid by postal remittance and the application number (or patent number) and the titles of the fees to be paid are clearly indicated on the money order, the date of remittance on the withdrawal notification issued by the post office shall be the date of payment. Where the date of remittance on the withdrawal notification issued by the post office is different from the date of remittance indicated by the postmark on the receipt of China Post, the date of remittance on the original receipt of China Post or the notarized duplicate copy submitted by the party concerned shall be the date of payment. Where the patent examiner doubts about the evidence submitted by the party concerned, he may require the party concerned to submit the certifying materials issued by the remitting post office with its official seal affixed.

Rule 94.3

Where the fees are paid by bank transfer and the application number (or patent number) and the titles of the fees to be paid are clearly indicated, the date on which the transfer of such fee is conducted shall be the date of payment. Where the party concerned disagrees with the date of payment, and submits the certifying materials issued by bank with its official seal affixed,

the date of payment shall be redefined in accordance with the transfer date that affirmed in the certifying materials.

Where the fees are paid by post remittance or bank transfer, and the application number (or patent number) of the fees to be paid is not indicated on the money order, the fees shall be refunded and the payment shall be deemed not to have been made.

Where the fees cannot be refunded or no person gets the refund due to the incomplete or inaccurate information of the person who remits the payment, the fees shall be temporarily deposited in the account of Patent Office and the payment shall be deemed not to have been made.

All of the fees shall be settled in RMB(Yuan). The fees that shall be paid in foreign currency according to relevant provisions shall be settled after the foreign currency is converted to RMB in accordance with the exchange rate as is provided for by the State on the date when the remittance is made.

3.Reduction and Postponement of Payment

Rule 100

Where any applicant (or patentee) has difficulties in paying the patent-related fees, he may submit a request for reduction or postponement of the payment to the Patent Office under rules of reduction and postponement of the patent-related fees.

3.1 Types of Fees That Can Be Reduced or Postponed

The following fees can be reduced or postponed in payment:

- (1) the filing fee (not including the printing fee for publication, the additional fee for filing an application);
- (2) the substantive examination fee for the patent application for invention;
- (3) the reexamination fee; and
- (4) the annual fee (the annual fee for the three years starting from the year in which the patent right is granted).

3.2 Formalities of Reducing and Postponing Payment

When a patent application is filed or during the procedure of examination, the applicant (or patentee) may submit a request for reduction or postponement of the required payment whose time limit does not expire.

Where the reduction or postponement of the payment is re-

requested, a request for reduction or postponement of the payment shall be submitted, and if necessary, the certifying documents shall be additionally submitted. The request for reduction or postponement of the payment shall be signed or sealed by all the applicants (or patentees). Where a patent agency is appointed by the applicants (or the patentees) to go through the formalities of reducing and postponing payment and submit the declaration, the request for reduction or postponement of the payment may be sealed by the agency. The declaration of appointing a patent agency to go through the formalities of reducing and postponing payment, may be indicated in the power of attorney, or may be submitted separately.

Where the request for reduction or postponement of the payment complies with the provisions, the examiner shall approve it and send a Notification of Decision on Reduction of Fees indicating the percentage and type of the fees to be reduced or postponed. Where the request for reduction or postponement of the payment does not comply with the provisions, the examiner shall send a Notification of Decision on Reduction of Fees indicating the reasons why the request is refused.

The rules of reduction and postponement of the patent-related fees should be separately issued.

4. Temporary Deposit and Refund of Fees

4.1 Temporary Deposit

Where neither a receipt can be written out nor the remittance can be refunded because of illegible handwriting or for lack of the necessary information on the money order, the money remitted shall be deposited temporarily in the bank account of the Patent Office. Where the content of the payment is clarified after the inquiry by the remitter with certifying documents, a receipt shall be written out in time or the fees shall be refunded.

Where the receipt is written, the date on which the temporary deposit ends is deemed to be the date of payment. However, where evidence is submitted within two months from the receipt of the Notification of Loss of Right sent by the Patent Office, if it is proved by evidence that it is the fault of the bank or the post office that leads to the temporary deposit of the fees, the

date of initial remittance shall be the date of payment.If the contents of the payment cannot be clarified after the three-yearlong temporary deposit is made,the account shall be settled and the fees shall be handed over to the higher authority.

4.2 Refund

4.2.1 Principles of Refund

Rule 94.4

Where any patent-related fee is paid in excess,in duplicate or in error,the party concerned may request a refund within three years from the date of payment,and the Patent Office shall refund the payment if the request complies with the relevant provisions.

4.2.1.1 Circumstances of Request for Refund

(1)The fee is paid in excess: for example,where the annual fee that the party concerned shall pay is 600 Yuan,and the actual fee the party concerned has paid in specified time limit is 650 Yuan,he may request a refund of the excessive 50 Yuan.

(2)The fee is paid in duplicate: for example,each time changes in the bibliographic data are requested,the handling fee for changes in the bibliographic data,200 Yuan,shall be paid.If the party concerned pays another 200 Yuan after he paid 200 Yuan,he may request a refund of the repeatedly paid 200 Yuan.

(3)The fee is paid in error: for example,when the party concerned wrongly specifies the fee type,or the application number (or the patent number)during payment,or the fee is not paid in full or not within the prescribed time limit which leads to loss of right,or the patent fee is paid after the loss of right,the party concerned can makes a request for refund.

4.2.1.2 Circumstances of Refund on the Patent Office's Own Initiative

When the payment of fees in the following circumstances can be verified,the Patent Office shall refund the payment on its own initiative:

(1)the substantive examination fee for the patent application for invention which has been paid after the patent application is deemed to have been withdrawn or the declaration of

withdrawing the patent application has been ratified, and before the Patent Office issues the Notification of Entering the Substantive Examination Procedure of the Application;

(2) the annual fee paid after the patent right is terminated or the decision on declaring the patent right entirely invalid is announced; or

(3) the fee for requesting the restoration of right and relevant fee paid by the party concerned where the Patent Office decides to refuse the request for restoration of right.

4.2.1.3 Circumstances of Refund Not to Be Made

(1) Where the party concerned requests the refund of a fee paid in excess, in duplicate or in error after more than three years from the date on which the payment was made;

(2) where the party concerned fails to provide evidence for the payment in error; or

(3) where a fee has already been paid according to relevant provisions before the request for reduction or postponement of the payment is approved, and the party concerned requests refund of the fee.

4.2.2 Formalities of Refund

4.2.2.1 Filing of Request for Refund

The person who requests a refund shall be the remitter of the payment. Where the applicant (or patent), the patent agency as a non-paying party requests a refund, it shall be stated that it or he commissioned by the remitter for refund.

Any request for refund shall be made in written form, and the grounds thereof and the corresponding certifying documents shall be attached, e.g., the copy of the payment receipt provided by the Patent Office, or the warrant provided by the post office or the bank, etc. The certifying documents provided by the post office or the bank shall be in the original. Where the original copy cannot be provided, the duplicate copy either notarized or affirmed by relevant authorities providing the documents with official seal affixed shall be provided.

Any request for refund shall indicate the application number (or patent number), the payment information concerning the fee

to be refunded (e.g., the money order number, the amount of the fee, etc.), and information of the payee. Where the party concerned requests a refund through the post office, information of the payee shall include the name, address and postal code.

Where the party concerned requests a refund through bank, information of the payee shall include the name or title, the bank's name and the account number of the bank.

4.2.2.2 Handling of Refund

Where the refund is approved after check, the Patent Office shall refund according to the information of the payee indicated in the request for refund.

Where no information of the payee is indicated in the request for refund, and the person who requests a refund is the applicant (or the patentee) or the appointed patent agency, the Patent Office shall refund according to the corresponding address and title or name recorded in documents.

The examiner shall send the Notification of Decision on Refund when refund is completed. Where the refund shall not be approved after check, the examiner shall indicate the reasons why the refund is not approved in the Notification of Decision on Refund.

4.2.3 Effect of Refund

The payment refunded shall be deemed not to have been made from the beginning.

4.2.4 Handling under Special Circumstances

4.2.4.1 Circumstances of Refund Due to Incomplete Information for Payment Caused by the Bank or Post Office

Where the refund of payment is due to lack of necessary information (e.g., application number or the type of fee) because of fault of the bank or the post office, if the party concerned has objection to the refund, he shall submit observations in written form and attach certifying documents provided by the bank or the post office with official seal affixed. The certifying documents shall include at least: the name or title of the remitter, the amount of the fee, the date of remittance, the application number (

or patent number)provided when remitting,the title of the fee,and so on.In the meantime,the party concerned shall anew pay the fee that has been refunded.

Where the above requirements are satisfied,the date of original payment shall be taken as the date of the new payment.For any decision that needs to be accordingly changed,the examiner shall send a Notification of Amendment to Decision.Where the above requirements are not satisfied,the examiner shall send a notification to the party concerned that the fee is deemed not to have been paid.

4.2.4.2 Circumstance That the Money Order Cannot Be Honored Due to the Remitter's Withdrawal of the Payment

Where the Patent Office receives the notice of withdrawal by the post office and provides the receipt and the money order cannot be honored because the remitter has withdrawn the payment, the Patent Office shall request the post office to note on the notice that the payment has been withdrawn by the remitter, with its official seal affixed.

After the post office has provided the document certifying that the payment has been withdrawn,the Patent Office shall handle it in time,and the said fee shall be deemed not to have been paid.

5.Inquiry about Payment

Where a party concerned requires to inquire about the payment of a fee,if no receipt of the Patent Office has been received, a duplicate copy of the bank money order or a duplicate copy of the voucher of the postal remittance,or,if the receipt of the Patent Office has been received,a duplicate copy of the receipt from the Patent Office,shall be provided.The time limit for inquiry is one year from the date on which the fee is remitted.

6.Change of Fee Type

In paying the fees for the same patent application(or patent), if the type of a fee has been filled in wrongly,the party concerned making the payment may request to change the type of the fee with corresponding certifying documents attached,

within the relevant time limit. The fee type may be changed after confirmation by the Patent Office. However, the fees for one application (or patent) cannot be converted to another.

Where the type of fee paid by the party concerned is obviously wrong, the examiner may change the fee type ex officio. Where the fee type is changed by the examiner ex officio, the party concerned shall be notified accordingly.

For any change in the fee type, the date of payment shall remain unchanged.

7. Supplemental Information for Payment

Where the fees are paid by postal or bank remittance without the required information of payment, the party concerned can provide the complete information by fax or email on the day of remittance, and the date of remittance shall be the date of payment. Where the supplement is incomplete on the day of remittance, the party concerned can provide the complete information once more, and the day on which the complete information is provided shall be the date of payment.

Where the information for payment is supplemental, the party concerned shall provide the copy of money order of the bank or a voucher of the postal remittance, the application number (or patent number), the title and the amount of each fee. In addition, the following information of the person that receives the receipts shall be provided: the title or name, address, and postal code etc. If the party concerned cannot provide the duplicate copy of the bank money order or the voucher of the postal remittance, it or he shall provide the date of remittance, the title or name of remitter, the amount of the fee and money order number, etc.

Chapter 3 Acceptance

1.Location of Acceptance

The receiving department of Patent Office includes the Receiving Division of the Patent Office and the local patent receiving agencies. The Receiving Division of the Patent Office is responsible for receiving patent applications and other relevant documents. The local patent receiving agencies are responsible for receiving some certain patent applications and other relevant documents according to relevant provisions. The Patent Reexamination Board may receive documents related to the reexamination or the invalidation declarations.

The Receiving Division of the Patent Office and the local patent receiving agencies shall set service windows for receiving applications and documents. Documents that are not registered through receiving procedure shall not enter into the procedures for examination and approval.

The Patent Office shall publish the addresses of the Receiving Division of the Patent Office and the local patent receiving agencies through announcement. If the application documents or other relevant documents are sent by post or submitted directly to any individual or any department other than the Receiving Division of the Patent Office, the date of sending or submission shall have no effect of determining filing date or submission date.

2.Acceptance or Nonacceptance of Patent Application

2.1 Requirements for Acceptance

Rule 39

The Patent Office shall accept patent applications meeting the following requirements:

- (1) the request shall be included in the application documents, in which the type of patent application is clear, and the name or title and address of the applicant are indicated;
- (2) the description and the claims shall be included in the documents of the patent application for invention; the descrip-

tion, drawings of the description, and the claims shall be included in the documents of the patent application for utility model; and drawings or photographs or brief description shall be included in the documents of the patent application for design;

(3) the application documents are typewritten or printed in Chinese. The writing and lines of the application documents shall be legible, free from alterations and neat enough for the contents of the documents to be identified. The drawings of the description of a patent application for invention or utility model and the pictures of a patent application for design shall be drafted with non-erasable ink, and free from alterations;

(4) where the applicant is a foreigner, foreign enterprise or other foreign organization, the application shall be in conformity with the provisions of Article 19.1, and the country to which the applicant belongs shall be in conformity with the provisions of Article 18;

(5) where the applicant is an individual or enterprise or other organization of Hong Kong, Macao or Taiwan, the application shall comply with the provisions of Chapter 1, Section 6.1.1 of Part I.

Rule 39

2.2 Circumstances of Nonacceptance

In any of the following circumstances, the Patent Office shall refuse to accept the application:

(1) where the patent application for invention does not contain a request, a description or claims; the patent application for utility model does not contain a request, a description, drawings, or claims; the patent application for design does not contain a request, drawings or photographs, or a brief description;

(2) where the application documents are not written in Chinese;

(3) where the application documents are not in conformity with the requirements of acceptance specified in Section 2.1(3) of this chapter.

(4) where the title or name of the applicant, or address is not indicated in the request .

Art.18

(5) where a foreign applicant is obviously not entitled to file an application for patent due to his nationality or its residence;

Art.19.1

(6) where, as the first named applicant, a foreigner, foreign enterprise or other foreign organization without habitual residence

or business office in Mainland China does not appoint a patent agency ;

(7)where,as the first named applicant,an individual,an enterprise or other organization from Hong Kong,Macao or Taiwan without habitual residence or business office in Mainland China does not appoint a patent agency ;

(8)where the application is mailed directly from a foreign country to the Patent Office;

(9)where the application is mailed directly from Hong Kong,Macao,or Taiwan to the Patent Office;

(10)where the kind of protection(patent for invention,utility model or design)of the application for a patent is not clear and definite or cannot be ascertained;or

Rule 42.3

(11)where the divisional application changes the application type.

2.3 Procedures of Acceptance and Nonacceptance

After receiving a patent application,Receiving Division of the Patent Office or the local patent receiving agencies shall review and check all of the documents,and issue Notification of Acceptance or Notification of Nonacceptance.

Rule 38

2.3.1 Procedure of Acceptance

Where a patent application meets the requirements of acceptance, procedure of acceptance is as follows:

(1)determining the date of receipt.According to the date on which the documents are received,the date of receipt shall be recorded in the documents to indicate the date on which the Receiving Department receives the documents;

(2)checking the number of documents.Check the total number of the documents,verify the titles and number of the application documents and other documents indicated in the request,and record the results of the check.As for patent application for invention relating to nucleotide or amino acid sequence,it shall be verified the sequence listing in a computer-readable form,such as CD-ROM or floppy disk,etc.,is submitted;

Art.28

Rule 4.1

(3)determining the date of filing.Where the patent application is directly submitted to the Receiving Division of the Patent

Office or a local patent receiving agency, the date of receipt shall be the date of filing. Where the patent application is sent to the Receiving Division of the Patent Office or a local patent receiving agency by post, the date of mailing indicated by the postmark on the envelope shall be the date of filing; Where the postmark is illegible, the date on which the Receiving Division of the Patent Office or the local patent receiving agency receives the application documents shall be the date of filing, and the envelope shall be kept in the file. Where the patent application is sent to the Receiving Division of the Patent Office or a local patent receiving agency by express delivery, the date of receiving shall be the date of filing. Where the patent application is sent by post or submitted directly to any department other than the Receiving Division or any individual of the Patent Office the date of sending or submission shall have no effect of determining filing date, and if the said application is transferred to the Receiving

Division of the Patent Office or a local patent receiving agency, the actual receiving date on which the Receiving Division or the local patent receiving agency receives the application shall be the filing date. As for a divisional application, the filing date of the original application shall be its filing date and the date of submission of the divisional application shall be indicated in the request;

(4) assignment of the application number. A corresponding application number shall be assigned to patent applications according to the application type and the order of filing. The application number shall be stuck on the request and the folder;

(5) recording the number of the registered letter. Where the patent application is sent by the registered letter, the number of the registered letter shall be recorded on the request;

(6) examining the request for a reduction or postponement of the payment. The request for a reduction or postponement of the payment submitted with the application simultaneously shall be examined according to the rules of reduction and postponement of the patent-related fees. Notification of Decision on Reduction of Fees shall be made and the corresponding mark shall be indicated on the request;

(7) collecting and verifying the data. According to the request of an application, collect and verify the data, print the data

verification sheet and correct the incorrect data;

(8)issuing the notification.The Notification of Acceptance of Patent Application,Notification to Pay Filing Fees or Notification of Decision on Reduction of Fees shall be sent to the applicant.

In the Notification of Acceptance of Patent Application,at least the application number,date of filing,name or title of the applicant and the verification information of the documents shall be indicated.The seal of the Receiving Division of the Patent

Office or the local patent receiving agency shall be affixed,and the seal of the examiner and the date of issuance of the document shall be affixed,too.

In the Notification to Pay Filing Fees,the filing fee,additional filing fees,other fees that the applicant is required to pay when the application is filed and the time limits for paying the fees shall be indicated,and the requirements for the payment of the fees shall also be indicated clearly.In the Notification of Decision on Reduction of Fees,the percentage of the reduction or postponement of the payment,the amount to be paid,the time limit and the relevant requirements for the payment shall be indicated; and

(9)Scanning the documents.The documents of a patent application that meet the requirements for acceptance shall be scanned and recorded in databases.The contents to be scanned include the application documents and other documents submitted at the time of filing.Besides,the electronic data of notifications issued by the Patent Office (e.g.,Notification of Acceptance of the Patent Application,Notification to Pay Fees or Notification of Decision on Reduction of Fees)shall also be recorded in databases.

2.3.2 Procedure for Acceptance of Divisional Application

2.3.2.1 Procedure for Acceptance of National Divisional Application

For a national divisional application,except for conducting the examination for acceptance according to the requirements for acceptance of a regular patent application,the Patent Office shall examine whether the original application number and the original date of filing are indicated in the request of the divisional

application. Where the original application number is filled correctly in the request of the divisional application, but the original date of filing is not indicated, the filing date corresponding to the original application number shall be deemed to be the filing date. If the original application number is not indicated or is indicated wrongly in the request of the divisional application, the application shall be accepted as a regular patent application.

For a divisional application that meets the requirements for acceptance, the Patent Office shall accept it, assign an application number to it, and acknowledge the original filing date as its filing date. The submission date of the divisional application shall be recorded.

2.3.2.2 Procedure of Acceptance for International Divisional Application Entering the National Phase

For an international application, if a divisional application is filed after it enters the national phase, in addition to conducting the examination for acceptance according to the requirements for acceptance of a regular patent application, the examiner shall verify whether the original date of filing and the original application number are indicated in the request of the divisional application. The said original date of filing shall be the filing date of the international application, and the original application number is the application number assigned by the Patent Office when it enters into the national phase, and the international application number of the original application shall be indicated in the following brackets as well.

2.3.3 Procedure of Nonacceptance

Where a patent application fails to meet the requirements for acceptance, procedure of nonacceptance is as follows:

(1) determining the receiving date. According to the date on which the documents are received, the receiving date shall be recorded in the documents to indicate the date on which the Receiving

Department receives the application documents;

(2) collecting data and issuing Notification of Nonacceptance. Collect the data and make the Notification of Nonacceptance of the Documents and send to the party concerned. In the notification, at least the name or title of the party concerned, detailed

address, reasons for nonacceptance, and the number of nonacceptance file shall be indicated and the seal of the Receiving Division of the Patent Office or the local receiving agencies shall be affixed with the signature of the examiner and the date of issuance of the notification; and

(3) the application documents that do not comply with acceptance requirements shall be kept in archives for inquiry, and shall not be returned to the party concerned in principle. Where patent applications that are directly submitted to the Receiving Division of the Patent Office or to the local patent receiving agencies fail to meet the requirements for acceptance, the reasons of nonacceptance shall be explained directly to the party concerned, and the applications shall be refused.

3. Acceptance or Nonacceptance of Other Documents

3.1 Requirements for Acceptance of Other Documents

Any other documents, submitted by the parties concerned after filing date, which meet the following requirements, the said documents shall be accepted by the Patent Office:

(1) the application number (or the patent number) of the patent application is indicated in the document and relate to only one patent application (or patent); and

(2) the various documents are written in clear and neat Chinese and are non-erasable. For certifying materials in foreign language, a list of the materials in Chinese shall be attached.

When other documents associated with the patent application submitted by the applicant (or the patentee), or any other parties concerned are received by the Receiving Division of the Patent Office, the local patent receiving agencies or the Patent Reexamination Board, the said Division, agencies or Board shall check and verify all the documents.

3.2 Procedure for Acceptance of Other Documents

Where the other documents meet the requirements for acceptance, the procedures of acceptance is as follows:

(1) determining the receiving date. According to the date on which the documents are received, the receiving date shall be recorded in the documents to indicate the date on which the Receiving

Department receives the said documents;

(2)checking the number of documents.Check the number of all the documents; verify the titles and number of the documents indicated by the party concerned on the list; and record the result of the verification on the list.Where no list is provided by the party concerned,the annex indicated in the principal document shall be verified and the result of verification shall be recorded in the principal document.Where the application number of the document submitted is incorrect,if the correct application number can be figured out on the basis of other information, the Receiving Division may,ex officio,make a correction.Otherwise, the documents shall not be accepted;

(3)determining the submission date.For determining the submission date of other documents,see Section 2.3.1(3)of this chapter.The submission date of the documents shall be recorded in the principal document;

(4)giving the receipt for receiving documents.Where the parties concerned submit the documents at the Reception Windows with two copies of the list of the documents attached,the duplicate copy of the list shall be recorded with the receiving date and indicated with the result of the verification of documents and send to the parties concerned as a receipt,and the original copy of the list shall be kept in the folder with the seal of the examiner affixed and the date of issuance of the document indicated.Where the parties concerned submit the documents without any list of documents attached or with only one copy of the list attached,no receipt for the documents shall be provided. Where the parties concerned submit the documents by post,the Patent Office shall not provide the receipt for the documents. Where the patent agency submits documents in batch and provides the list of documents,after verified and sealed by the Receiving Department,one copy of the list shall be sent to the patent agency as a receipt,and the other copy shall be kept in archives for reference; and

(5)collecting the data and scanning the documents.All relevant information,e.g.,type,number of copies,number of pages, and code of documents,shall be collected,and the documents shall be scanned and recorded in databases.

3.3 Procedure for Nonacceptance of Other Documents

Where the other documents fail to meet the requirements for acceptance, these documents shall be handled in accordance with the procedure as set forth in section 2.3.3 of this Chapter and issue the Notification of Nonacceptance of Documents.

4. Correction of Date of Filing

Where the applicant, after receiving the Notification of Acceptance of Patent Application, believes that the date of filing recorded in the notification is not the same as the date of mailing the application documents, it or he may request the Patent Office to correct the date of filing.

After receiving the request to correct the date of filing from the applicant, the Receiving Division of the Patent Office shall check whether such request meets the following requirements:

(1) whether it is submitted within two months from the date of submitting the patent application documents or within one month from the date on which the applicant receives the Notification of Acceptance of the Patent Application; and

(2) whether it is attached with the valid certificates of the mailing date provided by the post office that receives and delivers the patent application documents, and the number of the registered mail indicated in the certificates is identical with the registered number recorded in the request.

Where the above-mentioned requirements are met, the date of filing shall be corrected; otherwise, the date of filing shall not be changed.

Where it is decided to correct the date of filing, the Notification of Re-determination of Filing Date shall be made, the notification shall be sent to the applicant, and the relevant data shall be amended; where it is decided not to change the date of filing, the Notification that Request Deemed Not to Have Been Made shall be issued to the applicant requesting for correction of the date of filing, the reasons therefore shall be stated.

Where the party concerned has objection to the submission date of other documents determined by the Patent Office, he or it shall provide the return receipt issued by the Patent Office, the certificate provided by the post office in charge of mail receiving

and delivering, or other valid certifying materials. Where the materials meet the requirements, the Patent Office shall re-determine the submission date of the other documents and amend the relevant data.

5. Correction of Mistakes in Procedure of Acceptance

Once any mistakes related to acceptance are found, the Receiving Division of the Patent Office or the local receiving agencies shall correct them promptly, the Notification of Rectifications and Corrections shall be issued, and the relevant data shall be amended. The documents that are sent to other examination departments of the Patent Office by mistake shall be returned to the Receiving Division in time and the reason therefore shall be stated.

6. Inquiry

A register of receiving documents is established in the Receiving Division of the Patent Office. Unless the party concerned can provide the receipt for the receiving of the document or the Notification of Acceptance issued by the Patent Office or the local patent receiving agencies, the contents contained in the register shall prevail.

The time limit for inquiry is within one year from the date on which the document is submitted.

Chapter 4 Patent Application Files

1. Patent Application Files and its Composition Thereof

The files of a patent application are a collection of the documents of a patent application accumulated and kept as the original record for verification purpose in the procedures of examination and approval and in the valid term of the patent right. There are two kinds of patent application files, that is, paper files (dossier) and electronic files. Patent application files are the basis for examination of the patent application and decision-making of Patent Office.

2. Dossier

Dossier includes a folder and various documents therein.

2.1 Folder

A folder is used to keep the documents and record the important contents of the file. Therefore, it is an important part of the file as a whole.

When the folder has to be changed due to natural or intentional damage, the complete record on the folder shall be moved to the new folder, and the old folder shall be kept with the file and shall not be destroyed.

2.2 Documents

The documents in the patent application file are mainly from the following sources:

- (1) the patent application documents and other documents submitted by the applicant when filing the application;
- (2) the various documents submitted by the applicant according to the requirement of the examiner in the course of examination of the patent application;
- (3) the documents and certifying materials submitted by the applicant in going through formalities on his own initiative after filing the patent application;
- (4) the various documents concerning the patent application

(or patent) submitted by any parties and the documents produced by the People's Courts etc. after examining these documents in the course of examination of the patent application or in the valid term of the patent right; and

(5) other relevant documents.

mentioned documents, after being properly handled, established and filed, constitute important components of the file.

2.3 Establishment of Files

During establishment of files, the following principles shall be complied with:

(1) principle of authenticity. The collection shall be the original documents submitted by the applicant (or patentee), other parties concerned, etc., during the procedures of filing, examination and approval and various legal proceedings after grant of patent right. These documents shall not be replaced, removed, supplemented or altered;

(2) principle of one file for one application. One patent application shall have one independent file with the application number as the number of the file, which shall be used for the entire existence of the file.

Where the same applicant (or patentee) intends to go through the identical formalities in respect of several patent applications (or patents), he shall submit a request for each of the patent applications (or patents) respectively and the related documents shall be placed in their respective files. The applicant (or patentee) shall not leave out any document by using "see..." for cross-reference. Where patent applications are changed in the name or title of the applicant (or patentee) or the transfer of right in batch, the duplicate copy of the certifying document affirmed by the Patent Office shall have the same effect as the original one; and

(3) Principle of chronological order. Where a party concerned goes through the formalities before the Patent Office in accordance with the law, the Patent Office shall handle and place the various submitted documents in file in time.

The documents in a patent application file shall be placed in chronological order according to the time when they are handled.

3.Electronic Files

The establishment of electronic files shall comply with the principles in Section 2.3 of this chapter, and the following contents shall be included:

- (1) the graphic files and coded files made by the Patent Office on the basis of paper documents submitted by the party concerned;
- (2) the sequence listing of the nucleotide or amino acid submitted by the party concerned in accordance with the prescribed form;
- (3) the notifications, decisions (such as, Notification of Rectification, Decision of Rejection, etc.) and other documents (such as pamphlet of application for patent for invention, pamphlet of patent for invention, pamphlet of patent for utility model or pamphlet of patent for design, etc.) made by the Patent Office or the Patent Reexamination Board in the course of the patent examination and approval, reexamination or invalidation;
- (4) data of patent-related fees;
- (5) the historic record of the legal status and changes thereof related to the filing, examination and approval of patent application;
- (6) the historic record of all the bibliographic data and changes thereof in the course of the patent examination and approval;
- (7) electronic documents submitted by the party concerned through electronic application;
- (8) the evaluation report of patent; and
- (9) the symbol of classification, related examination departments, various marks (such as mark of priority, mark of request for substantive examination or mark of confidentiality, etc.);

4.Legal Effect

The patent application file is a true record of the legal procedures of the examination and approval, reexamination and invalidation declaration of the patent, as well as the relevant procedures resulting from disputes over ownership of right.

5.Consultation and Photocopying

5.1 Principles of Consultation and Photocopying

Art.21.3

(1)Until the publication of a patent application for invention and the announcement of the grant of patent right for utility model or design,the Patent Office is liable to keep them in confidential.In this period,the requester for consultation or photocopying

is limited only to the applicant and agent thereof;

(2)any person may file a request with the Patent Office to consult or photocopy the file of a published patent application for invention and the file of the patent application for granted utility model or design;

Rule 118.1

(3)in principle,the files of reexamination or invalidation cases that have been concluded may be consulted or copied;

(4)the Patent Office and the Patent Reexamination Board shall bear the responsibility to keep the files of reexamination or invalidation cases that have not been closed in confidential. For the documents in the procedure of reexamination or invalidation, the requester for consultation or photocopying is limited only to the party concerned of the said case;

(5)where the conclusion of the reexamination or invalidation case is that the request is deemed not to have been filed,not accepted,actively withdrawn,or deemed to have been withdrawn, for the documents in the procedure of reexamination or invalidation,the requester for consultation or photocopying is limited only to the party concerned of the said case;

(6)in principle,various documents provided by the party concerned upon the request of the Patent Office or the Patent Reexamination Board in need of examination may be consulted or copied.However,the above provisions do not apply if consultation or photocopying may cause damage to the legitimate interest of the party concerned,or involve privacy or trade secrets, etc;and

(7)relevant documents concerning the interests of the State or being kept in files for the internal operation or management needs of the Patent Office or the Patent Reexamination Board shall not be consulted or copied.

5.2 Contents Allowed for Consultation and Photocopying

(1)For a patent application for invention before publication and a patent application for utility model or design before the announcement of the grant of patent right,the applicant or agent thereof may consult or photocopy the relevant contents in the said patent application files,including the application documents, the formality documents directly relating to the application, notifications and decisions sent to the applicant in the preliminary examination procedure,and the text of the observations submitted by the applicant in response to the notifications;

(2)for the file of a patent application for invention which has been published and whose grant of patent right has not been announced,the contents in the file which may be consulted and copied relate to those before the date of the publication,including the application documents,formality documents directly relating to the application,publishment documents,notifications and decisions sent to the applicant in the preliminary examination procedure and the text of the observations submitted by the applicant in response to the notifications;

Rule 118.1

(3)for the file of a patent application for which grant of patent right has been announced,the contents in the file which may be consulted and copied include the application documents,the formality documents directly relating to the application,pamphlet of patent application for invention,pamphlet of patent for invention,pamphlet of patent for utility model or pamphlet of patent for design,Patent Register,and evaluation report of patent, and the various notifications and decisions issued by the Patent Office or the Patent Reexamination Board to the applicant or parties concerned,and the text of the observations submitted by the applicant or the parties concerned in response to the notifications in the examination proceedings which have been closed (including procedures of preliminary examination,substantive examination,reevaluation and invalidation,etc.);

(4)for the file of patent applications which are still in reevaluation or invalidation procedure and have not been closed, where consultation and photocopying of the file is necessary due to special needs,the contents in the file before starting the current procedure may be consulted and copied upon the approval of

the competent authorities in accordance with the relevant provisions of above-mentioned items (1) and (2); and

(5) except for the above-mentioned contents mentioned above, consultation or photocopying of other documents shall not be allowed.

5.3 Procedures for Consultation and Photocopying

The following procedures shall be followed for consultation and photocopying of the documents in the file of a patent application:

(1) the requester shall file a request in written form and pay the prescribed fees;

(2) after having verified and checked the relevant certificates or identification provided by the requester, a staff member of the Patent Office shall retrieve the file from the department where the file is kept and sort out the file in accordance with the provisions of Section 5.2 of this Chapter and take out the documents that are not allowed to be consulted and copied;

(3) the staff member of the Patent Office makes an appointment with the requester and issues a Notification of Approval for Consultation;

(4) the requester for consultation may, after producing the Notification of Approval for Consultation, consult the documents at the designated place and photocopy the documents as needed; and

(5) the staff member of the Patent Office shall rearrange the patent application file that has been consulted, put in the file the original copy of the certificates for consultation and the duplicate copy of the identification of the consulter, and return the file to the department concerned.

6. Preservation Period and Destruction of File

Rule 118.2 & .3

6.1 Preservation Period

The files of the closed cases are divided into two categories: files of patent applications that are closed without being granted a patent right (having been deemed to have been withdrawn, having been withdrawn or having been rejected) and files of patent applications that are closed after being granted a patent right (having been deemed to have abandoned the entitlement to

patent, patent right having been abandoned on the patentee's own initiative, termination of the patent right due to nonpayment of the annual fee, expiration of the patent right, patent right to be announced completely invalidated, etc.).

The preservation period for the ungranted closed files of patent applications is no less than two years, usually three years, and for the granted closed files of patent applications is no less than three years, usually five years, from the closing date of the relevant examination procedure.

The preservation period for the files of the original application with divisional applications shall start from the last closing date of the divisional applications.

The preservation period for the files of patent applications upon which a Notification of Nonacceptance has been issued is one year, calculated from the date on which the Notification of Nonacceptance is issued.

6.2 Destruction

Before destruction, a list of destructed files shall be created on the computer. The list shall include the file number, the basic bibliographic data and the date of destruction of each file to be destroyed. After the Commissioner in charge approves the destruction, the department in charge of keeping the files shall execute the work of destruction.

Chapter 5 Confidentiality Examination of Patent Application

to Be Kept Secret and Patent Application to Be Filed Abroad

1.Scope of Contents to Be Kept Secret

The scope of patent applications to be kept secret as provided for in Article 4 covers both inventions-creations relating to the security or other vital interests of the State.

According to Rule 7.1,where any patent application received by the Patent Office relates to the interests concerning national defense and is required to be kept secret,the application shall be promptly transferred to the patent department of national defense to carry out the examination.

According to Rule 7.2,Where the Patent Office finds that a patent application for invention or for utility model filed with it relates to the security or other vital interests of the State other than interests concerning national defense and is required to be kept secret,it shall promptly make a decision to handle it as a patent application to be kept secret,and notify the applicant accordingly.

2.Criteria for Keeping Patent Application Secret

For the criteria to be observed for an application to be kept secret,the relevant provisions provided by the competent departments of the State shall apply.

3.Determination of Secrecy of Patent Application

3.1 Determination of Secrecy Request Filed by Applicant

3.1.1 Filing of Secrecy Request

Where the applicant believes that its or his patent application for invention or for utility model relates to the security or other vital interests of the State and is required to be kept secret, it or he shall indicate in the request to keep the application secret

when filing the patent application, and shall submit the application document in the form of paper. The applicant may also request to keep the application secret before the patent application for invention entering into the phase of preparation for publication, or before the patent application for utility model entering into the phase of preparation for announcement.

Where the applicant, before submitting the secrecy request, determines that its or his application relates to the security or other vital interests of the State and is required to be kept secret, it or he shall submit relevant documents provided by the competent departments of the State in which the level of secrecy is determined.

3.1.2 Determination of Keeping Patent Application Secret

The examiner shall examine the patent application in accordance with the criteria for keeping patent application secret, and determine whether or not it is necessary to keep the application secret depending on the different circumstances.

Rule 7.1

(1) Where the contents of the patent application relate to the interests of national defense, the National Defense Patent Office shall determine the secrecy. Where the application is required to be kept secret, it shall be promptly transferred to the

National Defense Patent Office to carry out the examination, and the examiner shall issue the Notification of Transfer of Patent Application to National Defense Patent Office. Where the application is not required to be kept secret, the examiner shall issue the Notification of Decision on Secrecy to notify the applicant that the patent application is not to be kept secret and will be handled as a regular patent application.

Rule 7.2

(2) Where the contents of the patent application for invention or for utility model relate to the security or other vital interests of the State other than interests of national defense, the Patent

Office shall determine the secrecy, and if necessary, technical experts in related fields may be invited to assist in the determination. The examiner issues the Notification of Decision on Secrecy in accordance with the determined results of secrecy. Where the application is required to be kept secret, the applicant shall be notified that the patent application is to be kept secret and shall be handled as a patent application to be kept secret. Where

the application is not required to be kept secret,the applicant shall be notified that the patent application is not to be kept secret, and will be handled as a regular patent application.

3.2 Secrecy Determined by Patent Office Ex Officio

When classifying,the classification examiner shall screen out the patent application for invention or for utility model that may relates to the security or other vital interests of the State but no secrecy request is made by the applicant.The examiner shall determine the secrecy of said patent application in accordance with the provisions in Section 3.1.2 of this Chapter.

Where an electronic application is determined as a patent application to be kept secret,and if it relates to the security or other vital interests of the State and is required to be kept secret, the examiner shall transform the application into the form of paper and continue the examination,and notify the applicant accordingly.

The applicant shall submit all sorts of documents in form of paper to the Patent Office or the National Defense Patent Office hereafter,and shall not submit any document through the electronic patent application system.

Rule 7

4.Procedures of Examination for Patent Application to Be Kept Secret

Rule 55

(1)Where any patent application relates to the interests concerning national defense and is required to be kept secret,the application shall be examined by the National Defense Patent Office.

Where no grounds for rejection have been found after the examination,the Patent Office shall make a decision of grant of national defense patent right on the basis of the examination observations made by the National Defense Patent Office,entrust the National Defense Patent Office to issue the national defense patent certificate,and announce the patent number,the filing date and the date of granting the patent right in the Patent Gazette.

Where the Patent Reexamination Board of National Defense makes a decision of declaring the invalidity of the national defense patent right,the Patent Office shall announce the patent number,the date of granting the patent right,the number and the date of the decision on invalidity in the Patent Gazette.

(2)Where any patent application for invention or for utility model relates to the security or other vital interests of the State other than the interests concerning national defense and is required to be kept secret,it shall be examined and administered by the Patent Office according to the following procedures.

The examiner shall label the file of the patent application determined to be kept secret as secrecy,and keep it under secrecy management until the decision on declassification is made.

Both the preliminary examination and the substantive examination on the patent application to be kept secret shall be conducted by the examiners designated by the Patent Office.

Concerning a patent application for invention,the preliminary examination and the substantive examination shall be conducted in accordance with the criteria identical with those for regular patent applications for invention.After passing through the preliminary examination,the patent application to be kept secret shall not be published,and shall directly enter into the substantive examination stage if the request for substantive examination is in conformity with the provisions.Where no grounds for rejection have been found after the substantive examination,a decision to grant the patent right for invention to be kept secret shall be made,and the Notification to Grant Patent Right for Invention and the Notification to Go through Formalities of Registration shall be issued.

Concerning a patent application for utility model,the preliminary examination shall be conducted in accordance with the criteria identical with those for regular patent applications for utility model.Where no grounds for rejection have been found after the preliminary examination,a decision to grant the patent right for utility model to be kept secret shall be made,and the Notification to Grant Patent Right for Utility Model and the Notification to Go through Formalities of Registration shall be issued.

The announcement of grant of patent right to patent applications to be kept secret shall include only the patent number,the filing date,and the date of the announcement.

5.Declassification Procedures of Patent Applications (or Patents)

5.1 Request for Declassification by Applicant (or Patentee)

The applicant of a patent application to be kept secret or the patentee of a patent to be kept secret may request for declassification in written form. If the applicant (or patentee), when requesting secrecy, submits relevant documents from the competent departments of the State determining the level of secrecy, he shall provide a certifying document of approval of declassification from the original competent departments that determine the level of secrecy when requesting for declassification.

The Patent Office shall make decision on declassification of patent application (or patent) to be kept secret requested for declassification, and shall notify the applicants of the results.

5.2 Regular Declassification by Patent Office

The Patent Office shall conduct a review on the patent applications (or patents) to be kept secret every two years and shall notify the applicants of declassification as to the applications (or patents) which are no longer necessary to be kept secret.

5.3 Processing after Declassification

The examiner shall make a label of declassification for the patent application (or patent) that has been declassified. A patent application for invention, after declassification, shall be examined and administered as a regular patent application for invention if the patent right has not yet been granted; where it meets the conditions for publication, the application shall be published, and the pamphlet of the patent application for invention shall also be published. A patent application for utility model, after declassification, shall be examined and administered as a regular patent application for utility model if the patent right has not yet been granted.

Where a patent for invention or for utility model is declassified, the decision of declassification shall be announced, and the pamphlet of the patent for invention or for utility model shall be published, and the patent shall be administered as a regular patent.

6. Confidentiality Examination of Patent Application to Be Filed Abroad

Article 20.1 stipulates that where any entity or individual intends to file an application for patent abroad with any invention or utility model developed in China, it or he shall file it in advance with the Patent Office for confidentiality examination.

Article 20.4 stipulates that for an invention or utility model, if a patent application has been filed in a foreign country in violation of the provisions of the first paragraph of this Article, it shall not be granted patent right while filing application for patent in China.

In accordance with Rule 8, where any entity or individual intends to file an application for patent abroad with any invention or utility model developed in China, it or he shall request, by one of the following manners, the Patent Office to conduct confidentiality examination:

(1) where anyone intends to file an application for patent directly in a foreign country or an international patent application with a relevant foreign organization, it or he shall file the request for confidentiality examination in advance with the Patent Office and describe in detail the related technical solution;

(2) where after having filed an application for patent with the Patent Office, anyone intends to file an application for patent in a foreign country or an international patent application with a relevant foreign organization, it or he shall file a request for confidentiality examination with the Patent Office before filing the application for patent in a foreign country or the international patent application with the relevant foreign organization;

Where anyone files an international patent application with the Patent Office, it or he shall be deemed to have simultaneously filed a request for the confidentiality examination.

Said filing an application for patent abroad, mentioned in the above provisions, refers to filing a patent application with the patent administration department established by a foreign country or an intergovernmental patent cooperation organization.

Filing an international patent application with a relevant foreign organization refers to filing of an international patent application with the patent administration department established

by a foreign country or an intergovernmental patent cooperation organization, or the International Bureau of the World Intellectual Property Organization designated as the PCT Receiving Office.

6.1 Confidentiality Examination for Patent Application Intended to Be Filed Abroad Directly

6.1.1 Filing of Request for Confidentiality Examination

Rule 8.2

The documents for the request for the confidentiality examination of the patent application to be filed abroad shall include the Request for Confidentiality Examination of Patent Application to Be Filed Abroad and the description of the technical solution. The Request and the description of the technical solution shall be in Chinese. The person making the request may submit the corresponding documents in foreign languages for the examiner's reference. The description of the technical solution shall be identical with the contents of the patent application to be filed abroad. The description of the technical solution may be drafted according to the provisions of Rule 17, and shall be in conformity with other provisions in Chapter 1 of this Part.

6.1.2 Confidentiality Examination

Rule 9.1

The examiner conducts the preliminary confidentiality examination to the documents for the request for the confidentiality examination of the patent application to be filed abroad. Where the form of the documents for the request does not comply with the provisions, the examiner shall notify the person making the request that the request for confidentiality examination is deemed not to have been made, and the person making the request may submit a request for the confidentiality examination of the patent application to be filed abroad again as required. Where the technical solution is obviously not necessary to be kept secret, the examiner shall promptly notify the person making the request that it or he may file a patent application abroad. Where the technical solution may be required to be kept secret, the examiner shall notify the person making the request that further confidentiality examination shall be conducted and the patent application to be filed abroad shall be suspended. The

examiner shall issue the Notification of Confidentiality Examination of Patent Application to Be Filed Abroad, and inform the person making the request of said examination results. If the person making the request fails to receive the Notification of Confidentiality Examination of Patent Application to Be Filed Abroad within 4 months from the filing date of its or his request, it or he may file a patent application in respect of the technical solution abroad.

Rule 9.2

Where the person making the request is notified to suspend the patent application to be filed abroad, the examiner shall conduct further confidentiality examination, and if necessary, may invite technical experts in related fields to assist in the examination. The examiner shall issue the Decision on Confidentiality Examination of Patent Application to Be Filed Abroad based on the conclusions of the confidentiality examination, and notify the person making the request of the examination results on whether a patent application in respect of the technical solution to be filed abroad is permitted.

If the person making the request fails to receive the Decision on Confidentiality Examination of Patent Application to Be Filed Abroad within 6 months from the filing date of its or his request, it or he may file a patent application in respect of the technical solution abroad.

“The applicant fails to receive the notification or decision within 4 or 6 months from the filing date of its or his request” said in Rule 9 refers to that the date on which the notification or decision issued by the Patent Office is presumably received is not within the prescribed time period.

6.2 Confidentiality Examination of Patent Application to Be Filed Abroad after Filing a Patent Application

6.2.1 Filing of Request for Confidentiality Examination

Rule 8.2

Where the applicant intends to file a patent application abroad after filing a patent application with the Patent Office, it or he shall, at or after the filing date of the application, file the request for the confidentiality examination of the patent application to be filed abroad. Where the applicant fails to make a request

as required in the above provisions, the request shall be deemed not to have been made. The contents of the patent application filed abroad shall be identical with those in said patent application.

6.2.2 Confidentiality Examination

Concerning the patent application where a request for the confidentiality examination of the patent application to be filed abroad is filed, the examiner shall conduct the confidentiality examination with reference to the provisions of Section 6.1.2 of this Chapter.

6.3 Confidentiality Examination of International Application

Rule 8.2

6.3.1 Filing of Request for Confidentiality Examination

Where the applicant files an international application with the Patent Office, it or he shall be deemed to have filed simultaneously a request for the confidentiality examination of the patent application to be filed abroad.

6.3.2 Confidentiality Examination

Where the international application is not necessary to be kept secret, the examiner shall handle the international application in accordance with the regular procedure of the international phase. Where the international application is necessary to be kept secret, the examiner shall issue the Notification of Not Forwarding Record Copy and Search Copy for National Security Reasons within 3 months from the filing date, and notify the applicant and the International Bureau that the international application will not be handled as international application, and terminate the procedure of the international phase. Where the applicant receives said notification, it or he shall not file a patent application abroad in respect of the contents of said application.

Chapter 6 Notification and Decision

1. Production of Notification and Decision

1.1 Notification and Decision

During the procedures of the examination and approval, the reexamination and invalidation of a patent application, and other procedures prescribed in the Patent Law and its Implementing Regulations, various notifications and decisions shall be made by the examiner under different circumstances. These notifications and decisions principally include Notification of Acceptance, Notification of an Office Action, Notification to Make Rectification, Notification of Passing Examination on Formalities, Notification that Application Deemed to be Withdrawn, Notification of Decision on Request for Restoration of Right, Notification before Expiration of Time Limit of Request for Substantive Examination of the Application for Invention, Notification to Pay the Fees, Notification of Decision on Reduction of Fees, Notification of Passing Preliminary Examination of the Application for Invention, Notification of Publication of the Application for Invention, Notification of Entering the Substantive Examination Procedure of the Application for Invention, Notification to Grant Patent Right for Invention, Notification to Grant Patent Right for Utility Model, Notification to Grant Patent Right for Design, Notification to Go through Formalities of Registration, Notification that Entitlement to Patent Deemed Abandoned, Notification of Termination of Patent Right, Decision of Rejection, Reexamination Decision, and Examination Decision on Request For Invalidation, etc.

1.2 Drafting of Notifications and Decisions

The drafting of notifications or decisions shall comply with the relevant provisions of the Patent Law, its Implementing Regulations, and these Guidelines.

Unless specifically provided for in other Sections or Chapters of these Guidelines, a notification or decision shall generally

include the information of addressee, bibliographic data, contents of the notification or decision, signature and/or seal, and date of issuance of the document, wherein,

(1) the information of addressee includes the address, postal code, and name of the addressee;

(2) the bibliographic data includes application number (or patent number), title of the invention-creation, the names of all the applicants (or patentees), and titles or names of all the petitioners if the notifications are in the invalidation procedure or suspension procedure;

(3) contents of the notification or decision includes the title and text of the notification or decision. Where the examiner makes the notification or decision against the party concerned, the reasons shall be stated, and the follow-up legal procedure shall be indicated if necessary; and

(4) signature and/or seal. The notification or decision shall be signed or sealed by the examiner. When it is necessary to be checked, it shall also be signed or sealed by the checking person. The notification or decision issued shall be affixed with the examination seal of the State Intellectual Property Office or the Patent Reexamination Board.

2. Delivery of Notification and Decision

Rule 4

2.1 Manners of Delivery

2.1.1 Delivery by Post

Delivery by post refers to sending the notification or decision to the party concerned through the post office. Unless otherwise provided, documents shall be sent by registered mail, and the registration number, the address and name of the addressee, the type of document, the application number of the patent application concerned, the date of issuance of the document and the department issuing the document shall be recorded in the computer system. When a mail is returned, the date of return shall be recorded.

2.1.2 Delivery in Person

Upon the approval of the Patent Office, the patent agency

may receive the notification or decision at a place and time as designated by the Patent Office. In special circumstances, upon the approval of the Patent Office, the party concerned may also receive the notification or decision by himself at a place and time as designated by the Patent Office.

Except for delivery in person of a Notification of Acceptance or the receipt for documents at the Receiving Office, delivery in person of all other documents shall go through the formalities of registration and signature. In special circumstances, the party concerned shall be invited to sign or seal on the file of the application, and the type, number, and issuing authority of the identity certificate of the party concerned shall be recorded.

2.1.3 Delivery by Electronic Means

For an application filed in electronic form, where various notifications, decisions and other documents issued by the Patent Office to the applicant are in electronic form, the applicant shall receive them according to the approaches prescribed by the user registration agreement on use of the electronic patent application system.

2.1.4 Delivery by Public Notice

The examiner shall check the records when the notifications or decisions issued by the Patent Office are returned. If it is affirmed that the documents can not be sent by post again for the reason of ambiguity of the postal address or for other reasons, the party concerned shall be notified by public notice in the Patent Gazette. At the expiration of one month from the date of the public notice, the document shall be deemed to have been delivered.

2.2 Addressee

2.2.1 Where No Patent Agency Being Appointed by the Party Concerned

Where no patent agency is appointed by the party concerned, the addressee of the notification or decision shall be the contact person filled in the request. Where no contact person is filled in the request, the addressee shall be the party concerned.

Where there are two or more parties concerned, if a party concerned who is not signed first in the request is declared to be a representative, the addressee shall be the representative; otherwise, the addressee shall be the party concerned signed first in the request.

2.2.2 Where the Party Concerned Having Appointed a Patent Agency

Where a patent agency is appointed by the party concerned, the addressee of notifications or decisions shall be the patent agent designated by the said patent agency. Where two patent agents are designated, the addressees shall be the two patent agents.

2.2.3 Other Circumstances

Where the party concerned is of civil disability, on condition that the Patent Office is so notified, the addressee of the notification and decision shall be the legal guardian or legal agent.

Rule 4

2.3 Date of Delivery

2.3.1 Delivery by Post, Delivery in Person and Delivery by Electronic Means

Where a notification or decision is delivered by post, in person or by electronic means, the 16th day from the date of mailing shall be the date on which the party concerned presumably receives the notification or decision. For the notification or decision delivered by post, where the party concerned submits evidence proving that the actual date of receipt is later than the presumed date of receipt, the actual date of receipt shall be the date of delivery.

2.3.2 Delivery by Public Notice

Where a notification or decision is delivered to the party concerned by public notice in the Patent Gazette, the date of expiration of one month from the date of publication of the notice shall be taken as the date on which the notification or decision is received. The party concerned may provide a detailed address and request for a second delivery by post after noting the notice,

but the date on which the notification or decision is received shall remain to be the date of expiration of one month from the date of publication of the notice.

3. Handling of Returned Documents and Inquiry of Documents

3.1 Handling of Returned Documents

The notifications or decisions that are delivered by post and returned shall be recorded in computer by the department in charge of issuance of documents and then be transferred to the relevant department to be handled.

In handling the returned documents, the examiner shall first analyze and identify the reason of the mail being returned on the basis of the various documents submitted by the applicant and his patent agency in the application file. Where the correct address and addressee can be redetermined, the documents shall be sent again to the address and addressee corrected.

If, after the handling, the documents that are returned can not be sent by post again or are returned again, where necessary, the documents shall be delivered by public notice depending on the nature of the notification and decision.

The documents that are returned (together with the envelope) shall be put into the file.

3.2 Inquiry of Documents

Where the party concerned states that he has not received certain notification or decision from the Patent Office, the department which handle the returned documents shall make an inquiry of it. Such inquiry shall begin with the department in charge of the issuance of documents in the Patent Office, and the party concerned shall be notified of the result of the inquiry (including date of issuance, registered number and addressee of the notification or decision) by the department which handles the returned documents.

Where the party concerned requires to further inquire the delivery of the document, he shall go through the formalities of post road inquiry. The department in charge of the issuance of documents shall, via the local post office, consult the post office located in the place where the addressee lives. Where the result of the inquiry reveals that the responsibility of nondelivery of the document rests on the Patent Office or the post office, the notification or decision shall be sent again with a new date of issuance.

of the document. Where the result of the inquiry reveals that the responsibility of nondelivery of the document rests on the mail service department of the entity to which the addressee belongs or on the addressee himself or on a person connected to him, the Patent Office may redeliver the duplicate copy of the relevant notification or decision upon the request of the party concerned, while the date of issuance of the document shall remain unchanged.

The time limit for post road inquiry is within ten months calculated from the date of issuance of the document.

Chapter 7 Time Limit, Restoration of Right and Suspension of Procedure

1.Types of Time limit

1.1 Prescribed Time Limit

The prescribed time limit refers to any of the various time limits as prescribed in the Patent Law and its Implementing Regulations, such as the time limit for request for substantive examination of a patent application for invention (as provided in Article 35.1), and the time limit for an applicant to go through the formalities of registration (as provided in Rule 54.1).

1.2 Specified Time Limit

The specified time limit refers to the time limit specified by the examiner in the various notifications under the Patent Law and its Implementing Regulations for an applicant (or patentee), or any other person concerned to make a response or perform a certain act. For example, according to Article 37, when the Patent

Office finds, after the substantive examination of a patent application for invention, that the application is not in conformity with the provisions of the Patent Law, the applicant shall be notified to make observations or amend the application within a specified time limit. Such time limit is specified by the examiner.

For another example, according to Rule 3.2, if a certificate or certifying document submitted by the party concerned under the Patent Law and its Implementing Regulations is in a foreign language, the Patent Office, when considering it necessary, may request the party concerned to submit the Chinese translation of the certificate or the certifying document within a specified time limit. Such time limit is also specified by the examiner.

A specified time limit shall be in general two months. In the procedures of substantive examination of a patent application for invention, the time limit for the applicant to response to the first Office Action shall be four months. A one-month or shorter time limit may be specified for a less complicated act. The time

limit mentioned above shall be calculated from the date on which the party concerned presumably receives the notification.

2.Calculation of Time Limit

2.1 Dies a Quo of Time Limit

(1) Calculated from such fixed date as the date of filing, date of priority and date of announcement of the grant of patent right, etc.

Most prescribed time limits are calculated from a fixed date such as the date of filing, date of priority and date of announcement of grant of patent right. For example, it is provided in Article 42 that the term of a patent right shall be calculated from the date of filing. It is provided in Article 29.1 that a patent application for invention or for utility model claiming the priority based on a foreign application shall be filed within twelve months from the date on which the application serving as the basis is first filed in a foreign country (priority date).

(2) Calculated from the date on which a notification or decision is presumably received.

All of the specified time limits and part of the prescribed time limits are calculated from the date on which a notification or a decision is presumably received. For example, the time limit for the applicant to make observations or amend the application specified by the examiner in accordance with Article 37 (specified time limit) is calculated from the date on which the Office Action is presumably received by the applicant. The time limit for the applicant to go through the formalities of registration as provided for in Rule 54.1 (prescribed time limit) is calculated from the date on which the Notification to Grant Patent Right is presumably received by the applicant.

Rule 4.3

The date on which a document is presumably received refers to the 16th day from the date of the issuance of the said document by the Patent Office (the date is indicated in the notification or the decision). For example, where a notification is issued on 4 July, 2001 by the Patent Office, the date on which the notification is presumably received shall be 19 July, 2001.

2.2 Expiration of Time Limit

The date of expiration of a time limit shall be the last day of the prescribed or specified time limit calculated from the Dies a Quo of the time limit. The relevant acts shall be accomplished before, or at the latest on, the date of expiration.

Rule 5

2.3 Calculation of Time Limit

The first day (Dies a Quo) of any time limit is not to be calculated in. Where a time limit is calculated by year or by month, it shall expire on the corresponding day (the date corresponding Dies a Quo) of the last month; if there is no corresponding day in that month, the time limit shall expire on the last day of that month. For example, if the filing date of a patent application for invention is 1 June, 1998, the expiration date of the time limit for requesting the substantive examination shall be 1 June, 2001.

For another example, if an Office Action is sent by the Patent

Office on 6 June, 2008, the date on which it is presumably received is 21 June, 2008 (the date can not be postponed in case of statutory holidays); if the specified time limit for this notification is two months, the expiration date shall be 21 August, 2008.

For another example, if a notification is sent by the Patent Office on 16 December, 1999, the date on which it is presumably received is 31 December, 1999. If the specified time limit for this notification is two months, the expiration date shall be 29 February, 2000.

If a time limit expires on an official holiday or an adjusted weekly holiday, the time limit shall be extended to expire on the first working day after that official holiday or the adjusted weekly holiday; if the first working day is a weekly holiday, the expiration date shall be postponed to next Monday. Statutory holidays include the holidays enjoyed by all citizens as provided for in

Article 2 of the "Measures on Having a Holiday for National Annual Leaves and Memorial Days" promulgated by the State Council and the weekly holidays as provided for in Article 7.1 of the "Provisions of the State Council on Working Hours of Workers and Staff".

3. Monitoring of Time Limit

3.1 Determination of Time Limit

A time limit is always determined from the date of filing of a patent application. For example, after a patent application is filed by an applicant, and the date of filing is affirmed, the various time limits which are calculated from the date of filing shall be determined while the file of the said patent application is established.

The examiner, when making the various notifications or decisions in connection with the time limits, shall determine the time limits for making a response that are calculated from the date on which the notification or decision is presumably received.

3.2 Monitoring Time Limit

The various time limits are generally monitored by computer systems. After an applicant has gone through the formalities relating to a time limit, the date of going through such formalities shall be recorded in computer systems and be compared with the expiration date of the corresponding time limit, so that the legitimacy of the said formalities in respect of the time limit can be ascertained.

The time limit shall be monitored on a day-to-day basis and shall be handled in time. If a time limit has not been eliminated one month after its expiration, it shall be handled and a decision shall be made accordingly. For example, a Notification to Make Rectification was sent by the Patent Office on September 4, 2001 to notify the applicant to submit the Chinese translation of a certifying document of transfer of priority within one month; the date on which the notification was received presumably by the applicant shall be September 19, 2001, and the expiration date of the time limit is October 19, 2001. If the Patent Office failed to receive the Chinese translation submitted by the applicant, the time limit shall be handled after November 19, 2001, and a Notification that Claim to Priority Deemed Not to Have Been Made shall be sent.

3.3 Notification before Expiration of Time Limit

(1) At the time of three months before the expiration of the time limit for requesting the substantive examination for a patent application for invention, if no such request has been made or

the corresponding fee has not been paid,a Notification before Expiration of Time Limit of Request for Substantive Examination of the Patent Application for Invention shall be issued to notify the applicant to go through the relevant formalities.

(2)At the time of one month after the expiration of the time limit for the payment of the annual fee,a Notification to Pay Annual Fee shall be issued,regarding the patent for which the relevant annual fees have not been paid,to notify the applicant to pay the relevant annual fees and the surcharge within the time limit for late payment as provided for in Rule 98.

(3)No notification as a reminder will be issued before the expiration of other kinds of time limit.

4.Extension of Time Limit

Rules 6.4 & 71

4.1 Request for Extension of Time Limit

A party concerned may request to extend a time limit if he cannot perform or complete a certain act or procedure within the time limit with justified reasons.The request for the extension of time limits shall be limited only to the specified time limits. However,in the procedure of invalidation,the time limit specified by the Patent Reexamination Board shall not be extended.

Rules 6.4 & 99.2

Where the extension of time limit is requested,the request for extension of time limit,with the reasons explained,shall be submitted and the fee for requesting the extension shall be paid before the expiration of the time limit.The fee for such request shall be calculated by month.

4.2 Approval of Request for Extension of Time Limit

The request for extension of time limit shall be examined and approved by the department that has made the corresponding notification or decision or the flow management department. Where the extension of time limit is less than one month,it shall be calculated as one month.The extension of time limit shall not exceed two months.In general,a time limit,which is specified in the same notification or decision,may be extended only once.

Where the request does not meet the requirements,a Notification of Decision on Extension of Time Limit shall be issued and

the reason for non-approval of the request for extension of the time limit shall be stated. Where the request meets the requirements, a Notification of Decision on Extension of Time Limit shall be issued and a change shall be made to the expiration date of the time limit in the computer system, which means the time limit shall be reestablished for being monitored.

5. Handling for Failure to Meet Time Limit

5.1 Check before Making Decision of Disposition

The outcome of the applicant's (or the patentee's) failure to meet a time limit is that the applicant (or patentee) loses the corresponding right, which essentially includes the right to apply for a patent (or the patent right) and the priority right, etc.

Before making a decision of disposition, the examiner shall recheck whether it needs to make such a decision. The decision shall be made only when it is ascertained that the applicant (or patentee) has not completed an act that should have been completed within the prescribed or specified time limit.

5.2 Decision of Disposition

The decisions of disposition for failure to meet time limit mainly include: application deemed to have been withdrawn, entitlement to patent deemed to have been abandoned, termination of patent right, application being not accepted, request deemed not to have been made, and right of priority deemed not to have been claimed.

The drafting of the decision of disposition shall be in conformity with Chapter 6, Section 1.2 of this Part and shall be made one month after the date on which the time limit expires.

5.3 Handling after Making a Decision of Disposition

Where the right to apply for a patent (or patent right) is not influenced by the decision of disposition, the original procedure continues.

Where the right to apply for a patent (or patent right) is lost after the decision of disposition is made, there shall be a two-month time limit (from the date on which the decision is presumably received) for requesting restoration of right under regulations.

Where no request for restoration of right is made at the expiration of the time limit, or where the request for restoration of right does not meet the requirements, the patent application or patent shall be respectively handled as follows after four months from the date of issuance of the decision (six months for reexamination or invalidation procedure):

(1) where the decision of disposition concerns an unpublished patent application, the decision of disposition shall be checked again, and if it is confirmed inerrant, the patent application shall be handled to be invalid.

(2) where the decision of disposition concerns a published patent application for invention or an announced patent, the decision of disposition shall be checked again, and if it is confirmed inerrant, the decision of disposition shall be announced in the Patent Gazette. The patent application (or the patent) shall be handled to be invalid.

Where, after the decision of loss of right to apply for a patent or loss of patent right is made, a relevant document indicating that actually the corresponding formalities have been completed within the prescribed time limit is received, the flow management department shall revoke the corresponding decision timely and issue a Notification of Amendment and Corrections.

The correction shall be further published if the decision has been published.

Rule 6

6. Restoration of Right

6.1 Scope of Application

Rule 6.1 and Rule 6.2 provide for the requirements to be met for requesting restoration of right which is lost due to failure to meet a time limit. However, Rule 6.5 provides that any right lost due to failure to meet the following four kinds of time limit, namely, the grace period for non-prejudicial disclosures, the priority period, the patent term, and the prescription for instituting legal proceedings of infringement, can not be restored.

6.2 Formalities

To request for restoration of right under Rule 6.2, the party concerned shall submit a request for restoration of right, state

the reason, and pay the fee for restoration of right within two months from the date of receipt of the decision of disposition made by the Patent Office or the Patent Reexamination Board. To request for restoration of right under Rule 6.1, the party concerned shall submit a request for restoration of right and state the reason within two months from the date on which the impediment is removed, at the latest within two years immediately following the expiration of that time limit, and attach, if necessary, the relevant supporting documents.

At the time of requesting for restoration of right, the party concerned shall go through the corresponding formalities that shall have been completed before the loss of right, and eliminate the cause that leads to the loss of right. For example, where a patent application is deemed to have been withdrawn due to failure to pay the application fee, at the time of requesting for restoration of the right to apply for a patent, the applicant shall pay the prescribed application fee.

6.3 Examination and Approval

The examiner shall examine the request for restoration of right in accordance with Sections 6.1 and 6.2 of this Chapter.

(1) Where the request for restoration of right meets the requirements, the restoration of right shall be approved and a Notification of Decision on Request for Restoration of Right shall be issued. Where the applicant submits a letter to express the willingness to request the restoration of right, the letter may be deemed as an eligible request as long as it indicates the application number (or patent number) and is signed or sealed in accordance with requirements.

(2) Although, within the specified time limit, the request in writing has been submitted or the fee for requesting restoration of right has been fully paid, the request is still not in conformity with requirements. Under such circumstance, the examiner shall issue a Notification to Rectify Formalities of Restoration to ask the party concerned to make rectification or go through relevant formalities within specified time limit. If the rectification made or the formality gone through is in conformity with requirements, the right shall be permitted to restore and a Notification of Decision on Request for Restoration of Right shall be issued.

If no rectification is made within the time limit or the rectification made does not meet the requirements, the right shall not be restored and a Notification of Decision on Request for Restoration of Right shall be issued with reasons thereof explained.

The procedures of examination and approval of patent application shall proceed if the right to apply for a patent (or patent right) is restored with the approval of the Patent Office. In addition, where the decision of disposition has been announced, the decision of restoration of right shall also be announced in the Patent Gazette.

Rules 86.1 & 87

7. Suspension of Procedures

Suspension of procedures refers to an action of the Patent Office to suspend the relevant procedures upon the request of a party concerned in a dispute over the ownership of right or under the request of the People's Court when a dispute over the right to apply for a patent (or ownership of patent right) is accepted by the local intellectual property administrative authority or the People's Court, or when the People's Court has ordered the adoption of measures of property preservation for the right to apply for a patent (or the patent right).

7.1 Requirements for Request of Suspension

The following requirements shall be met for requesting the Patent Office to suspend the relevant procedures:

Rule 86.1

(1) where a party concerned files the request of suspension, the dispute over the ownership of right to apply for patent (or of patent right) shall have been accepted by the local intellectual property administrative authority or by the People's Court.

Where assistance to enforce the adoption of measures of property preservation for the right to apply for a patent (or a patent right) is asked for by the People's Court, the civil order for property preservation shall have been made; or

Rule 87

(2) the requester for suspension shall be either the party concerned in a dispute over the ownership of right or the People's Court that has adopted the measures of property preservation for the right to apply for a patent (or a patent right).

7.2 Scope of Suspension

The scope of suspension includes the following:

(1)suspend the procedures of preliminary examination,substantive examination,reevaluation,the grant of patent right, and invalidation;

(2)suspend the procedures of an application deemed to be withdrawn,entitlement to patent deemed to have been abandoned, and termination of patent right due to failure to pay annual fee,etc;and

(3)suspend the formalities to withdraw a patent application, to abandon patent right,to make a change of the name of the applicant(or patentee),to transfer the right to apply for a patent (or the patent right),and to register the pledge of patent right, etc.

Where,the procedure of preparation for publication or announcement has started before the request for suspension is approved, the said procedure shall not be affected by the request for suspension.

7.3 Formalities and Examination and Approval of Request for Suspension

7.3.1 Suspension Requested by the Party Concerned in a Dispute over Right Ownership

7.3.1.1 Formalities of Requesting Suspension by the Party Concerned in a Dispute over Right Ownership

Where the party concerned in a dispute over the ownership of right to apply for a patent (or a patent right)requests the Patent Office to suspend the relevant procedures,he shall:

(1)submit a request for suspension;

(2)attach certifying documents,i.e.,the original or duplicate copy of the document for acceptance with patent application number (or patent number)issued by the local intellectual property administrative authority or the People's Court .

7.3.1.2 Examination and Approval of Suspension Requested by the Party Concerned in a Dispute over Right Ownership

After the Patent Office receives the request for suspension of procedures and the relevant certifying documents provided by the party concerned, the flow management department thereof shall examine whether the following requirements are met:

(1) the patent application (or patent) being requested for suspension has not lost its rights, except for the invalidation procedure;

(2) no suspension of procedure has been enforced;

(3) the request is submitted by the party concerned in the dispute over the ownership of right as indicated in the relevant certifying document;

(4) the authority receiving the dispute has jurisdiction over the dispute of ownership of right to apply for a patent (or of a patent right);

(5) the application number (or patent number), title of the invention-creation and the owner of the right indicated in the certifying document are identical with those recorded in the patent application (or patent);

(6) other aspects of the request for suspension and the certifying document meet the formal requirements as prescribed.

Where the requirements of paragraph (1), (2), (3), (4), or

(5) is not met, the examiner shall issue a Notification that Request Deemed Not to Have Been Made to the requestor for suspension.

Where the requirement of paragraph (6) is not met, for example, the request for suspension does not meet the formal requirements or the submitted certifying document is neither the original nor the copy thereof, the examiner shall issue a Notification to Rectify Formalities to notify requestor for suspension to make rectification within one month. The relevant procedures are suspended temporarily within the time limit of the rectification. If no rectification is made within the time limit, or the fault is not eliminated after rectification, the Notification that Request

Deemed Not to Have Been Made shall be issued to the requestor for suspension, and the relevant procedures shall be resumed.

Where the above requirements are met when the request is filed or after the rectification is made, the suspension shall be enforced, and the examiner shall issue a Notification of Decision on

Request for Suspension to both parties in a dispute over the ownership of right to apply for a patent (or of the patent right), and notify the commencement date and the cessation date of the suspension period (from the date on which the request for suspension is filed).For a patent in the procedure of invalidation, the flow management department of the Patent Office shall also notify the Patent Reexamination Board of the decision of enforcing the suspension,and the Patent Reexamination Board shall notify the parties concerned in the invalidation procedure.

7.3.2 Suspension Due to Execution Assistance of Property Preservation Asked by the People's Court

7.3.2.1 Formalities of Suspension Due to Execution Assistance of Property Preservation

Where the relevant procedures are suspended due to the execution assistance of property preservation asked by the People's Court,the following requirements shall be met:

(1)the People's Court shall serve the specified receiving department of the Patent Office with the civil order of property preservation of the right to apply for a patent (or patent right) and the Notification on Assistance in Execution,and provide the address,postal code and name of the addressee of the People's Court;

(2)the civil order and the Notification on Assistance in Execution shall indicate the information of the patent application or patent upon which the Patent Office is asked to assist the execution, such as the application number (or patent number),the title of the invention-creation,and the name or title of the applicant (or the patentee),as well as the property preservation period; and

(3)the patent application (or the patent)upon which execution assistance of property preservation is asked for shall be valid.

7.3.2.2 Check and Handling of Suspension Due to Execution

Assistance of Property Preservation

The Patent Office shall check the civil order and the Notification on Assistance in Execution from the People's Court in accordance with the provisions of Section 7.3.2.1 of this chapter after receiving them, and handle them according to the following provisions:

(1) for those dissatisfying the requirements, issue a Notification of Non-Enforcement of Property Preservation to the People's Court, explain the reasons for not to execute the suspension, and continue the original procedure;

(2) for those satisfying the requirements, execute the suspension, issue a Notification of Commencement of Preservation Procedure to the People's Court and the applicant (or patentee), indicate the commencement date and the cessation date of the time period of assisting the execution of property preservation (from the date of receiving the civil order), and announce the property preservation of patent application (or the patent right); and

(3) for any patent application (or patent) that has been executed property preservation, preservation shall not be executed once again. If another People's Court also asks for execution assistance of the property preservation after a suspension being executed, the preservation request may be put in waiting list in turn. The Patent Office shall make the waiting list in turn. The preservation request on the top of the waiting list shall be executed from the date on which the previous preservation comes to an end.

For patent in the invalidation procedure, the flow management department of the Patent Office shall also notify the Patent Reexamination Board of the decision of enforcing the suspension, and the Patent Reexamination Board shall notify the parties concerned in the invalidation procedure.

7.4 Time Limit of Suspension

Rule 86.3

7.4.1 Time Limit of Suspension Requested by the Party Concerned in a Dispute over Right Ownership

For the request for suspension made by a party concerned in

a dispute over the ownership of the right to apply for a patent (or of patent right), the duration of the suspension shall generally not exceed one year. That is, the suspension shall end one year after the date of filing the request for suspension.

If no decision is made on the dispute over the ownership of right to apply for a patent (or patent right) within one year of the suspension and it is necessary to continue the suspension, the requester may request to extend the suspension before the expiration date of the suspension after submitting certifying document of reasons for not concluding the case issued by the authority receiving the dispute over the ownership of right. The suspension may be extended once, and the extension period shall not exceed six months. If the request for extension of suspension does not comply with the provisions mentioned above, the examiner shall issue a Notification of Decision on Extension of Time Limit and explain the reason for non-approval of extension. If the request for extension complies with the provisions mentioned above, the examiner shall issue a Notification of Decision on Extension of Time Limit to notify both parties in the dispute over the ownership of the right.

Rule 87

7.4.2 Time Limit of Suspension Due to Execution Assistance of Property Preservation

For the suspension due to execution assistance of property preservation asked by the People's Court, the suspension period is generally six months. The suspension shall cease six months after the date of receiving the civil order.

Where the People's Court orders to continue adopting measures of property preservation, it shall serve the Patent Office with a Notification on Assistance in Execution for keeping on the preservation before the expiration of the time limit for suspension. The suspension may be extended six months if the Notification on Assistance in Execution complies with the regulations set forth in Section 7.3.2.1 of this chapter after being checked. The time limit for suspension shall not exceed 12 months for a preservation verdict made during the execution procedure by the same court for the same case. If the preservation verdict is made during the trial procedure, the time limit for preservation can be extended accordingly.

7.4.3 Time Limit of Suspension Concerning Invalidation Procedure

With respect to patents in the invalidation procedure, the duration for suspension as requested by the party concerned in a dispute over the ownership of right or asked by the People's Court to assist in execution of property preservation shall not exceed one year. The Patent Office will resume the relevant procedures on its own initiative once the time limit of suspension expires.

7.5 Cessation of Suspension Procedure

7.5.1 Cessation of Suspension Requested by the Party Concerned in a Dispute over Right Ownership

Rule 86.3

After the time limit for suspension expires, the Patent Office shall resume the relevant procedures on its own initiative, and the examiner shall issue a Notification of Cessation of Suspension to both parties concerned in a dispute over right ownership.

For the patent application (or patent) which is still in the suspension period, after the decision made by the local intellectual property administrative authority or the judgment made by the

People's Court takes effect (after the change of bibliographic data when the decision or judgment concerns the change of the owner of the right), the Patent Office shall cease the suspension.

After receiving the document of mediation, civil order or written judgment submitted by the party concerned, stakeholder, the local intellectual property administrative authority, or the People's Court, the Patent Office shall examine the following contents:

(1) whether the said document is valid, i.e., whether or not it is the official copy (original copy or duplicate copy) and whether or not it is made by the authority that has jurisdiction over the case;

(2) whether the application number (or patent number), the title of the invention-creation and the owner of the right recorded in the said document are identical with the record in the patent application (or patent) under request for cessation of suspension; and

(3)whether the said document has taken effect,for example, whether or not the time limit for appeal in the decision document has expired (there is no time limit of appeal for documents of mediation).Where it can not be determined whether or not the said document has taken effect,the examiner shall send a Notification f Receiving the Judgement of People’’s Court to the adversary party to affirm whether or not there will be an appeal. Where no response is made within the specified time limit or where it is clearly expressed that there will be no appeal,the said document shall be deemed to have taken effect.Where an appeal is made,the appellant shall submit the certifying document issued by the higher People’’s Court,and the original decision of the inferior People’’s Court shall not take effect.

Where the said document does not meet the requirements, the examiner shall issue a Notification that Request Deemed Not to Have Been Made to the party requesting for cessation and the suspension procedure continues.Where the said document meets the requirements and there is no change over the owner of right, the examiner shall issue the Notification of Cessation of Suspension to notify both parties concerned,and resume the relevant procedures.

Where the said document meets the requirements and the change of owner of right is involved,the examiner shall issue the Notification to Rectify Formalities to notify the party that is to obtain the right to go through the formalities of changing the bibliographic data within three months from the date of receipt of the notification and to go through other formalities that are required to complete during the suspension but have not been completed.Where the party that is to obtain the right has gone through the formalities,the examiner shall issue the Notification of Cessation of Suspension to notify both parties concerned,and resume relevant procedures.Where the relevant formalities are not gone through within the time limit,the right to apply for a patent application (or patent right)shall be deemed to have been abandoned.The examiner shall issue a Notification that Application

Deemed to be withdrawn or a Notification that Entitlement to Patent Deemed Abandoned to the party that is to obtain the right.Where the restoration formalities are not gone through within the time limit,the suspension shall be ceased.The examiner

shall issue a Notification of Cessation of Suspension to notify both parties concerned, and resume relevant procedures.

Rule 87

7.5.2 Cessation of Suspension Procedures Due to Execution

Assistance of Property Preservation Asked by the People's Court

After the time limit for suspension expires, where there is no request of the people's court to continue the preservation, the examiner shall issue a Notification of Cessation of Suspension to notify the People's Court and the applicant (or patentee), resume the relevant procedure, and announce the discharging of preservation of the patent right. Where there is a waiting list in turn of the preservation request, the preservation request on the top of the waiting list shall be executed from the date on which the previous preservation comes to an end. The duration of the preservation is 6 months. The examiner shall issue the Notification of cessation of Suspension to the previous People's Court and the applicant (or patentee), issue the Notification of Commencement of Preservation Procedure to the People's Court on the top of the waiting list and the applicant (or patentee), indicate the commencement date and the cessation date of execution assistance of property preservation, and announce the property preservation of patent right.

Where the notification of discharging preservation from the People's Court which asks for execution assistance of property preservation is received, if it is in conformity with relevant provisions after being checked, the examiner shall issue the Notification of Cessation of Suspension to notify the People's Court and the applicant (or patentee), resume relevant procedures, and announce the discharging of preservation for the patent right.

Chapter 8 Compilation of Patent Gazette and Pamphlet

Rule 90

1. Patent Gazette

1.1 Types of Patent Gazette

The patent gazettes compiled and published by the Patent Office include Invention Patent Gazette, Utility Model Patent Gazette and Design Patent Gazette. The patent gazettes are distributed in the form of journal, while electronic gazette form is published on the website of State Intellectual Property Office at the same time, or other forms are published by the Patent Office. The patent gazettes are published according to annual plan. Each of the three kinds of Patent Gazette shall be published once a week.

1.2 Contents of Patent Gazette

1.2.1 Invention Patent Gazette

Invention Patent Gazette shall include the publication of the applications for patent for invention, publication of international applications for patent, grant of patent right for invention, secret patent for invention, matters relating to patent for invention, and index (index of publication of applications, index of announcement of grant of patent right).

1.2.1.1 Publication of Patent Application for Invention

Where a patent application for invention is found to have met the requirements after the preliminary examination, the preparation for the publication of the application shall begin at the expiration of fifteen months from the date of filing (the priority date where priority is claimed), and the application shall be published at the expiration of eighteen months from the date mentioned above. Where an applicant requests his application to be published on an earlier date, before it is found to pass the preliminary examination, such preparation shall start from the date on which the application is found in conformity with the require-

ments after the preliminary examination, or where an applicant requests his application to be published on an earlier date after it is found to pass the preliminary examination, such preparation shall start from the date on which the statement is found in conformity with the requirements, and the application shall be published in time. At the expiration of fifteen months from the date of filing (date of priority if with right of priority), if it is found that, for various reasons, a patent application for invention is not in conformity with the requirements of the preliminary examination, the publication of the application shall be put off. For any patent application for invention which is rejected, or deemed to have been withdrawn, or withdrawn by the applicant on his own initiative before preparation of publication, or treated as a secret application in the procedures of preliminary examination, no publication shall be made to it.

The contents of publication for a patent application for invention shall include the bibliographic data, the abstract and the drawing accompanying the abstract. Where there is no drawing in the description, there can be no drawing accompanying the abstract. The bibliographic data shall mainly include the symbol of International Patent Classification, application number, publication number (publishing number), date of publication, date of filing, matters concerning the right of priority, matters concerning the applicant, matters concerning the inventor, matters concerning the patent agency and the title of the invention, etc.

1.2.1.2 Grant of Patent Right for Invention

Where, according to the Notification to Grant Patent Right and the Notification to Go through Formalities of Registration made by the Patent Office, the patent applicant for invention has paid in time the patent registration fee, the annual fee of the year when the patent right is granted and other relevant fees, the patent application shall enter into the phase of preparation for the announcement of grant of patent right and the grant shall be announced.

The contents of announcement of grant of patent for invention shall contain the bibliographic data, the abstract and the drawing accompanying the abstract. Where there is no drawing in the description, there can be no drawing accompanying the abstract.

The bibliographic data shall mainly include: the symbol of International Patent Classification, patent number, number of announcement of grant of patent (publishing number), date of filing, date of announcement of grant of patent, matters relating to right of priority, matters relating to the patentee, matters relating to the inventor, matters relating to the patent agency, and the title of invention, etc.

1.2.1.3 Secret Patent for Invention and National Defense Patent for Invention

For a secret patent for invention, only the matters relating to the grant of secret patent and the declassification of secret patent shall be announced. The bibliographic data in the announcement of secret patent includes: patent number, date of filing, and date of announcement of grant of patent right, etc.

After the declassification of a secret patent for invention, the declassification shall be announced in the item for declassification in the Patent Gazette, and a pamphlet shall be published.

The above provisions shall apply when the grant of national defense patent right for invention and the declassification of national defense patent are announced.

1.2.1.4 Matters Relating to Patent for Invention

Matters relating to a patent for invention shall publish the decisions and notifications made by the Patent Office relating to a patent application for invention and a patent for invention, including taking effect of a request for the substantive examination, decision of the Patent Office to conduct the substantive examination with regard to a patent application for invention on its own initiative, rejection of the patent application for invention after its publication, withdrawal of the patent application for invention after its publication, deemed to be withdrawn of the patent application for invention after its publication, deemed to have been abandoned of the entitlement to patent, invalidation of the whole patent right (or part of the patent right), cessation of patent right, abandonment of patent right on the patentee's own initiative, restoration of the right to apply for a patent (or of patent right), transfer of the right to apply for a patent or patent right, compulsory license for exploitation of patent, submission

for record of patent license contract for exploitation,pledge and preservation of the patent right and their discharge, change of the name or address of the patentee or other bibliographic data,delivery of documents by public notice,corrections of the Patent Office and other related matters.

1.2.1.5 Index

The indexes of invention are divided into two categories: the index of application publication and index of announcement of grant of patent right.Each type of index is further divided into index of symbol of international patent classification,index of application number (or index of patent number),index of applicant (or index of patentee)and index of concordance list of publication number/application number (number of announcement of grant of patent right/patent number).

1.2.2 Utility Model Patent Gazette

The Utility Model Patent Gazette shall include the grant of patent right for utility model,the secret patent for utility model, matters relating to patent for utility model and the index of announcement of grant of patent right.

1.2.2.1 Grant of Patent Right for Utility Model

Where,according to the Notification to Grant Patent Right and the Notification to Go through Formalities of Registration made by the Patent Office,the applicant for patent for utility model has paid in time the patent registration fee,the annual fee of the year when the patent right is granted,and other relevant fees,the patent application shall enter into the phase of preparation for the announcement of grant of patent right and the grant shall be announced.

The contents of announcement of grant of patent for utility model shall include the bibliographic data,the abstract and the drawing accompanying the abstract.The bibliographic data shall mainly include: the symbol of International Patent Classification, patent number,number of announcement of grant of patent right (publishing number),date of filing,date of announcement of grant of patent right,matters relating to right of priority,matters relating to the patentee,matters relating to the inventor,

matters relating to patent agency, and the title of utility model, etc.

Where an applicant has filed an application for patent for invention regarding identical invention-creations on the same day when he files an application for patent for utility model and has stated his application, such statement shall be announced.

1.2.2.2 Secret Patent for Utility Model and National Defense Patent for Utility Model

For a secret patent for utility model, only the matters relating to the grant of secret patent and the declassification of secret patent shall be announced. The bibliographic data in the announcement of secret patent shall include: patent number, date of filing, and date of announcement of grant of patent right, etc.

After the declassification of a secret patent for utility model, the declassification shall be announced in the item for declassification in the Patent Gazette, and a pamphlet shall be published.

The above provisions shall apply when the grant of national defense patent right for utility model and the declassification of national defense patent are announced.

1.2.2.3 Matters Relating to Patent for Utility Model

Matters relating to a patent for utility model shall publish the decisions and notifications made by the Patent Office concerning an application for a patent for utility model and a patent for utility model, including invalidation of the whole patent right (or part of the patent right), cessation of patent right, abandonment of patent right on the patentee's own initiative, abandonment of patent right for utility model to avoid double patenting, restoration of patent right, transfer of patent right, compulsory license for exploitation of patent, submission for record of patent license contract for exploitation, pledge and preservation of the patent right and their discharge, change of the name or address of the patentee or other bibliographic data, delivery of documents by public notice, correction of the Patent Office, and other related matters.

1.2.2.4 Index of Announcement of Grant of Patent Right

The indexes of announcement of grant of patent right for utility model shall include index of symbol of International Patent Classification, index of patent number, index of patentee, and the index of concordance list of number of announcement of grant of patent right/ patent number.

1.2.3 Design Patent Gazette

The Design Patent Gazette shall contain the grant of patent rights for design, matters relating to patent for design and the index of announcement of grant of patent rights.

1.2.3.1 Grant of Patent Right for Design

Where, according to the Notification to Grant Patent Right and the Notification to Go through Formalities of Registration made by the Patent Office, the applicant for patent for design has paid in time the patent registration fee, the annual fee of the year when the patent right is granted, and other relevant fees, the patent application shall enter into the phase of preparation for the announcement of grant of patent right and the grant shall be announced.

The contents of announcement of grant of patent right for design shall include the bibliographic data, and one of the drawings or photographs of the design patent. The bibliographic data shall mainly include: the symbol of classification, patent number, number of the announcement of grant of patent right (publishing number), date of filing, date of announcement of grant of patent right, matters relating to the right of priority, matters relating to the patentee, matters relating to the designer, matters relating to the patent agency, and the title of the product incorporating the design, etc.

1.2.3.2 Matters Relating to Patent for Design

In the part of matters relating to patent for design, the decisions and notifications made by the Patent Office concerning patent applications for design and patents for design shall be published. The items therein include announcement of invalidation of patent right in whole (or in part), cessation of patent right, abandonment of patent right on the patentee's own initiative, restoration

of patent right,transfer of patent right,submission for record of patent license contract for exploitation,pledge or preservation of patent right and its discharge,change of the name or address of the patentee or other bibliographic data,delivery of documents by public notice,correction of the Patent Office,and other related matters.

1.2.3.3 Index of Announcement of Grant of Patent Right

The index of announcement of grant of patent right for design shall include index of the symbol of design classification,index of patent number,index of patentee,and index of concordance list of number of announcement of grant of patent right/patent number.

1.3 Compilation of Patent Gazette

1.3.1 Compilation of Application Documents

The documents of a patent application for invention for publication and the documents of a patent application for invention, the documents of a patent application for utility model or the documents of a patent application for design for announcement of grant of patent right shall meet the requirements for the photoengraving, and the bibliographic data shall be consistent with the information contained in the patent application file of the time of preparation for publication or the time of preparation for announcement of grant of patent right.

The publication of an application for a patent for invention or the grant of patent right for invention and utility model shall be arranged in the order of the International Patent Classification symbol.Those having identical main classification symbols shall be arranged in the order of application numbers.

The grant of patent right for design shall be arranged in the order of the symbols of design classification.Those having identical classification symbols shall be arranged in the order of application numbers.

Each printed page of Patent Gazette shall be divided into two columns,the left column and the right column,and shall be compiled from top to bottom and from left to right in a continuous

way.

1.3.2 Compilation of Matters

The compilation of matters in the various Patent Gazettes shall follow the following principles:

(1) the decision made by the Patent Office on the loss of right to a patent application for utility model or for design before the announcement of grant of patent right shall not be published. The decision made by the Patent Office on the loss of right to a patent application for invention before the publication of that application shall not be published;

(2) the various decisions made by the Patent Office which have taken effect and should be announced under regulations shall be published; and

(3) where more than two identical matters are to be published in the same issue of Patent Gazette, they shall be arranged in the order of main classification numbers; where the main classification numbers are identical, they shall be arranged in the order of the application numbers.

1.3.2.1 Taking Effect of Request for Substantive

Examination, Decision of the Patent Office to Conduct Substantive Examination on Its own Initiative

This part is for patent applications for invention only. The items to be published shall include the main classification symbol, patent application number and date of filing.

1.3.2.2 Rejection, Withdrawal and Deemed Withdrawal of Patent

Application for Invention after Publication

This part is for patent applications for invention already published only. The items to be published shall include the main classification symbol, patent application number, and date of publication.

1.3.2.3 Patent Application for Invention for Which Entitlement to

Patent Right Deemed to Have Been Abandoned

The items to be published in this part shall include the main classification symbol, and the patent application number.

1.3.2.4 Compulsory License for Patent Exploitation

The items to be published in this part shall include the main classification symbol, patent number, and date of announcement of grant of patent right.

1.3.2.5 Cessation of Patent Right

The items to be published in this part shall include the main classification symbol, patent number, date of filing and date of announcement of grant of patent right.

1.3.2.6 Taking Effect, Change and Cancellation of Submission for Record of License Contract for Patent Exploitation

The items to be published for taking effect of submission for record of license contract for patent exploitation shall include the main classification symbol, patent number, symbol of submission for record, assignor, assignee, title of invention, date of filing, date of publication of invention, date of announcement of grant of patent right, type of license (sole, exclusive or non-exclusive), and date of submission or record.

The items to be published for change of submission for record of license contract for patent exploitation shall include the main classification symbol, patent number, symbol of submission for record, date of changing, item to be changed (type of license, assignor, assignee), and contents before and after the change.

The items to be published for cancellation of submission for record of license contract for patent exploitation shall include the main classification symbol, patent number, symbol of submission for record, assignor, assignee, and date of discharge of submission for record of license contract.

1.3.2.7 Taking Effect, Change and Cancellation of Registration of Pledge Contract of Patent Right

The items to be published for taking effect of registration of pledge contract of patent right shall include the main classification symbol, patent number, symbol of registration, date of taking effect of the registration of pledge contract, pledger, pledgee, title of invention, date of filing, and date of announcement of grant of patent right.

The items to be published for change of registration of pledge contract of patent right shall include the main classification symbol, patent number, symbol of registration, date of changing, item to be changed (pledger, pledgee), and contents before and after the change.

The items to be published for cancellation of registration of pledge contract of patent right shall include the main classification symbol, patent number, symbol of registration, pledger, pledgee, date of filing, date of announcement of grant of patent right, and date of discharge of registration of pledge contract.

1.3.2.8 Preservation of Patent Right and its Discharge

The items to be published for preservation shall include the main classification symbol, patent number, date of filing, date of announcement of grant of patent right, and date of taking effect of the registration of preservation.

The items to be published for discharge of preservation shall include the main classification symbol, patent number, date of filing, date of announcement of grant of patent right, and date of discharge of preservation.

1.3.2.9 Transfer of Patent Application or Patent Right

The items to be published in this part shall include the main classification symbol, patent application number (patent number), item to be changed, right owner before the change, right owner after the change, and date of taking effect of the registration.

1.3.2.10 Announcement of Invalidation of the Whole Patent Right (or Part of the Patent Right)

The items to be published for announcement of invalidation of the whole patent right shall include the main classification symbol, patent number, date of announcement of grant of patent right, number of decision of invalidation, and date of decision of invalidation of patent.

The items to be published for announcement of invalidation of part of the patent right shall include the main classification symbol, patent number, date of announcement of grant of patent right, number of decision of invalidation, date of decision of invalidation

of patent, and the claims maintaining the validity.

1.3.2.11 Abandonment of Patent Right on the Patentee's Own Initiative

The items to be published in this part shall include the main classification symbol, patent number, date of filing, date of announcement of grant of patent right, and date on which the abandonment takes effect.

1.3.2.12 Abandonment of Patent Right for Utility Model to Avoid Double Patenting

The items to be published in this part shall include the main classification symbol, patent number, date of filing, date of announcement of grant of patent right, and date on which the abandonment takes effect.

1.3.2.13 Restoration of Right

The items to be published in this part shall include the main classification symbol, patent application number (patent number), title of the decision concerning loss of right, and date of announcement of the same decision.

1.3.2.14 Delivery of Documents by Public Notice

Where the post address for a notification is not clear and the Patent Office is unable to notify the party concerned to respond or to go through formalities within the prescribed or specified time limit, the notification shall be published in this part. The items to be published shall include the main classification symbol, application number, addressee, and title of the notification.

1.3.2.15 Other Relevant Matters

The contents which need to be announced other than those stated in the above parts shall be published in this part.

1.3.2.16 Correction

Once any printing error or any other mistake is found in the Patent Gazette, the Patent Office shall make a correction to correct them in time, by announcement in this part. The correction

of different types of errors or mistakes shall be published respectively. The items to be published shall include the main classification symbol,application number (or patent number),volume number of the original announcement,item to be corrected, and contents before and after the correction.

1.3.3 Compilation of Index

1.3.3.1 Index of Classification Symbol

For invention and utility model,the index shall be compiled in accordance with the International Patent Classification symbols. For design,the index shall be compiled in accordance with the design classification symbols.

The index of the classification symbol shall be arranged in the order of the classification symbols.Those having identical classification symbols shall be arranged in the order of the publication number or the number of announcement of grant of patent right.

The items in the index of the classification symbols shall include the classification symbol,publication number or number of announcement of grant of patent right.

1.3.3.2 Index of Application Number or Patent Number

The index of application number or patent number shall be arranged in the order of the application numbers or patent numbers. The items in the index of application numbers or patent numbers shall include the application number or patent number, publication number or the number of announcement of grant of patent right.

1.3.3.3 Index of Applicant or Patentee

The index of applicant or patentee shall be arranged in the order of Pinyin of the characters of the name of the applicant or patentee.Those having identical first Chinese character for their names shall be arranged in the order of Pinyin of the second Chinese character,and so on.Names in foreign languages shall precede the others and follow the alphabetic order.Where the applicants or patentees are the same,they shall be arranged in

the order of the publication number or number of announcement of grant of patent right.

The items in the index of the applicant or patentee shall include the applicant or patentee, publication number or the number of announcement of grant of patent right.

1.3.3.4 Index of Publication Number/Application Number (Number of Announcement of Grant of Patent Right/Patent Number)

The index of concordance list of publication number/application number (number of announcement of grant of patent right/patent number) shall be arranged in the order of the publication number (number of announcement of grant of patent right).

The items in the index of concordance list of publication number/application number (number of announcement of grant of patent right/patent number) shall include publication number (number of announcement of grant of patent right) and application number (patent number).

Rule 91

2. Pamphlet of the Application for Patent and the Pamphlet of Patent

The Patent Office shall compile and publish the pamphlets. The pamphlets of patent application and the pamphlets of patent shall be published once a week, and on the same day when the corresponding Patent Gazette is published.

2.1 Types of Pamphlet

The types of pamphlet include pamphlet of application for patent for invention, pamphlet of patent for invention, pamphlet of patent for utility model and pamphlet of patent for design.

2.2 Contents of Pamphlet

2.2.1 Pamphlet of Application for Patent for Invention

The document type code for published pamphlet of application for patent for invention is "A". It shall include the head page, the claims, and the description (where there are drawings in the description, including the drawings).

The head page consists of the bibliographic data, the abstract, and the drawing accompanying the abstract. Where there is no drawing in the description, there can be no drawing accompanying the abstract. The contents of the head page shall be consistent with those of the corresponding patent application published in the Patent Gazette on the same day.

The claims, the description and the drawings shall be based on the text designated by the examiner in the Notification of Passing Preliminary Examination of the Application for Patent Right for Invention.

2.2.2 Invention Patent Pamphlet

The document type code for pamphlet of patent for invention is "B". The pamphlet shall include the head page, the claims, and the description (where there are drawings in the description, including the drawings).

The head page consists of the bibliographic data, the abstract, and the drawing accompanying the abstract. If there is no drawing in the description, there can be no drawing accompanying the abstract. As compared with the contents of the corresponding patent for invention published in the Patent Gazette on the same day, the contents of the head page further include the item for examiner and the item for reference documents.

The claims, the description and the drawings shall be based on the text designated by the examiner in the Notification to Grant Patent Right.

Where, in the invalidation procedure after a patent for invention is granted, the patent right is maintained subject to amendment to the claims, the claims after amendment shall be republished, with a document type code successively selected from "C1-C7". The date of the announcement of the amended claims shall be indicated therein.

2.2.3 Pamphlet of Patent for Utility model

The document type code for pamphlet of patent for utility model is "U". The pamphlet shall include the head page, the claims, the description and the drawings.

The head page consists of the bibliographic data, the abstract and the drawing accompanying the abstract. The contents of

the head page shall be consistent with those of the corresponding patent for utility model published in the Utility Model Patent Gazette on the same day.

The claims, the description and the drawings shall be based on the text designated by the examiner in the Notification to Grant Patent Right.

Where, in the invalidation procedure after a patent for utility model is granted, the patent right is maintained subject to amendment to the claims, the claims after amendment shall be republished, with a document type code successively selected from "Y1-Y7". The date of announcement of the amended claims shall be indicated therein.

2.2.4 Pamphlet of Patent for Design

The document type code for pamphlet of patent for design is "S". The pamphlet shall include the head page, the colored drawings or photographs of the design, and the brief explanation.

The head page consists of the bibliographic data and one of drawings (or photographs) of the design. The contents of the head page shall be consistent with those of the corresponding patent for design published in the Design Patent Gazette on the same day.

The colored drawings or photographs and the brief explanation shall be based on those designated by the examiner in the Notification to Grant Patent Right.

Where, in the invalidation procedure after a patent for design is granted, the patent right is maintained subject to amendment to the drawings or photographs, the drawings or photographs after amendment shall be republished with a document type code successively selected from "S1-S7". The date of announcement of the amended drawings or photographs shall be indicated therein.

2.3 Correction

Rules 58 & 90.1(15)

Once an error is found in the pamphlet of application for patent for invention, the pamphlet of patent for invention, the pamphlet of patent for utility model and pamphlet of patent for design, the Patent Office shall make a correction in time. The

corrected pamphlet of application for patent or pamphlet of patent
shall be republished, with the head page being marked.

Chapter 9 Grant and Termination of Patent Right

1. Grant of Patent Right

1.1 Procedure of Grant of Patent Right

1.1.1 Notification to Grant Patent Right

Art.39 & 40

Where it is found after the substantive examination of a patent application for invention or after the preliminary examination of a patent application for utility model or design that there is no grounds for rejection of the application, the Patent Office shall make a decision to grant the patent right, issue the patent certificate, and conduct registration in the Patent Register, and announce it in the Patent Gazette. The patent right shall take effect from the date of announcement.

Before the grant of patent right, the Patent Office shall issue the Notification to Grant Patent Right.

Rule 54.1

1.1.2 Notification to Go through Formalities of Registration

At the same time when the Patent Office issues the Notification to Grant Patent Right, it shall also issue the Notification to Go through Formalities of Registration. The applicant shall go through the formalities of registration within two months from the date of receipt of the notification.

Rule 97

1.1.3 Formalities of Registration

When the applicant goes through the formalities of registration, he shall pay registration fee for the grant of the patent right, the annual fee of the year in which the patent right is granted (the year indicated in the Notification to Go through Formalities of Registration), the printing fee for the announcement of grant of patent right, and the stamp tax for patent certificate according to the fee indicated in the Notification to Go through Formalities of Registration.

Art.39 & 40

Rule 54.1

1.1.4 Issuance of Patent Certificate,Registration and Announcement of Grant of Patent Right

Where the applicant goes through the formalities of registration within the prescribed time limit,the Patent Office shall issue the patent certificate,register and announce it at the same time.The patent right shall take effect from the date of the announcement.

After the applicant has gone through the formalities of registration, the Patent Office shall prepare the patent certificate, and make preparations for the registration of the grant of the patent right and the announcement of the decision to grant the patent right.After the patent certificate is made,it may be sent to the patentee in accordance with the provisions of Chapter 6,Section 2.1.1 of this Part.In special circumstances,it may also be delivered directly to the patentee in accordance with the provisions of Chapter 6,Section 2.1.2 of this Part.

Rule 54.2

1.1.5 Entitlement to Patent Deemed to Have Been Abandoned

Where the applicant fails to go through the formalities of registration within the prescribed time limit under the provisions set forth in Section 1.1.3 of this Chapter after the Patent Office issues the Notification to Grant Patent Right and the Notification to Go through Formalities of Registration,the Patent Office shall issue the Notification that Entitlement to Patent Deemed Abandoned.Such notification shall be made one month after the date of expiration of the time limit of going through formalities of registration,and the legal procedures for restoration of the right shall be indicated.Where,four months after the date of issuance of the notification,the formalities of restoration have not been gone through,or the Patent Office has made a decision of rejection to restore the right,the patent application shall be handled to be invalid.For a patent application for invention, the entitlement to patent right deemed to have been abandoned shall be announced in the Patent Gazette.

1.2 Patent Certificate

1.2.1 Composition of Patent Certificate

The patent certificate consists of the front page and the patent pamphlet.

The patent certificate shall contain the important bibliographic data concerning the patent right, the hallmark of the State Intellectual Property Office, signature of the Commissioner, and date of announcement of grant of patent right, etc.

The said bibliographic data shall include the patent certificate number (serial number), the title of the invention-creation, the patent number (i.e. the application number), the filing date, the name of the inventor or designer, and the name of the patentee. Where the bibliographic data of a patent is too long to be contained in one page, additional page(s) may be attached. If total pages of the patent pamphlet in the certificate are over 110, pages from page 101 shall be in the form of an additional copy.

1.2.2 Duplicate Copy of Patent Certificate

Where for one patent there are two or more patentees, the Patent Office may issue duplicate copies of the patent certificate at the request of the joint patentees. However, the number of the duplicate copies of the patent certificate for one patent shall not exceed the number of the joint patentees. The Patent Office shall not issue duplicate copy of patent certificate once the patent right terminates.

If, after the issuance of the patent certificate, there is a change in the patentee due to transfer of the patent right, the Patent Office will not issue any duplicate copy of the patent certificate to the new or newly-added patentee.

The duplicate copy of a patent certificate has the word "copy" indicated on it. The format and contents of the duplicate copy of a patent certificate shall be identical with the format and contents of the original. The fee for duplicate copy and the stamp tax shall be charged for issuance of a duplicate copy of a patent certificate.

1.2.3 Replacement of Patent Certificate

Where, according to the settlement of the local intellectual property administrative authority or the judgment of the People's

Court on a dispute over the ownership of the patent right, the patent right is returned to the person who filed the case, he may, after the said settlement or judgment takes effect, request the Patent Office for the replacement of the patent certificate after the formalities of changing patentee has been passed through. If the patent certificate is damaged, the patentee may request for the replacement of the patent certificate. If the patent right terminates, the Patent Office shall no longer replace the patent certificate. If the patentee changes due to transfer of patent right or name change of the patentee, the patent certificate shall not be replaced.

When requesting for replacement of the patent certificate, the patentee shall return the original certificate and pay the handling fee. The Patent Office shall verify the patent application record after receiving the request for replacing the patent certificate. If the request meets the requirements, the Patent Office may prepare a new patent certificate and issue it to the party concerned. The format and contents of the replacing certificate shall be identical with those of the original patent certificate. The original patent certificate shall be put into the file of the patent application with the word "replaced" indicated thereon.

1.2.4 Correction of Typing Errors in the Patent Certificate

Where there is any typing error in the patent certificate, the patentee may return the certificate and request the Patent Office to correct it. The Patent Office shall correct the typing error after verification, and shall send the replaced certificate to the patentee. The original certificate shall be put into the file of the patent application with the word "replaced" indicated thereon. No patent certificate shall be reissued if the original patent certificate is lost, unless the loss is due to the Patent Office.

1.3 Patent Register

1.3.1 Format of the Patent Register

The Patent Office shall establish the Patent Register when the patent right is granted. The contents to be recorded in the Patent Register include the grant of the patent right, transfer of the

patent application or of the patent right,declassification of the secret patent,invalidation of the patent right,termination of the patent right,restoration of the patent right,pledge and preservation of the patent right and their discharge,the license contract for patent exploitation submitted for the record,compulsory license for the patent exploitation,and change in the name,nationality and address of the patentee.

Once made,the above said items are recorded in the Patent Register.The items recorded in the Patent Register shall be stored in the form of data in database.When the duplicate copy of the Patent Register is made,it shall be printed according to the prescribed format,and shall take effect when it is affixed with the special seal of certification.

1.3.2 Effect of the Patent Register

At the time when the patent right is granted,the contents of the Patent Register are consistent with those recorded in the patent certificate,they have the same legal effect.After the grant of the patent right,the change in the legal status of the patent is recorded only in the Patent Register.For this reason,where the contents contained in the Patent Register are not consistent with those recorded in the patent certificate,the legal status contained in the Patent Register shall prevail.

1.3.3 Duplicate Copy of the Patent Register

Rule 118.1

Duplicate copy of the Patent Register is made according to the original.After the announcement of grant of patent right, any person may request the Patent Office to issue a duplicate copy of the Patent Register.When any person requests the Patent Office to issue a duplicate copy of the Patent Register,he shall submit a request for the duplicate copy,and pay the corresponding fee.

Upon receipt of the said request and payment of the fee,the Patent Office shall make a duplicate copy of the Patent Register. After being verified with the file of the patent application and confirmed inerrant,the duplicate copy shall be affixed with the special seal for certification and sent to the person who made the request.

2.Termination of Patent Right

2.1 Termination Due to Expiration of Term of Patent Right

Art.42

The duration of patent right for inventions shall be twenty years,and the duration of patent right for utility model and patent right for design shall be ten years,counted from the filing date.For example,if the filing date of a patent application for utility model is September 6,1999,the term of the patent right is from September 6,1999 to September 5,2009,and the date of termination of the patent right is September 6,2009(the date can not be postponed in case of statutory holidays).

When the term of a patent right expires,it shall be registered in the Patent Register and announced in the Patent Gazette respectively in time,and it shall be handled to be invalid.

2.2 Termination of Patent Right Due to Patentee's Failure to Pay Annual Fee

Rule 98

2.2.1 Annual Fee

The annual fee of the year in which the patent right is granted shall be paid at the time of going through the formalities of registration, and the subsequent annual fees shall be paid before the expiration of the preceding year. The date on which the time limit for payment expires is the corresponding date of the current year to the filing date.

2.2.1.1 Annual Period

An annual period for a patent is counted from the date of filing. It is irrelevant to the date of priority or that of grant of the patent right. It is not necessarily relevant to a calendar year either. For example, the date of filing of an application for a patent is June 1, 1999, the first year of that patent application is counted from June 1, 1999 to May 31, 2000, and the second year of the patent application is counted from June 1, 2000 to May 31, 2001, and the rest can be deduced by analogy.

2.2.1.2 Amount of Annual Fee Payable

The annual fee for every year shall be paid in the amount as prescribed in the fee schedule. For example, the date of filing of an application for a patent is June 3, 1997, and the application is granted a patent right on August 1, 2001 (date of announcement of grant of patent right). If the applicant paid the annual fee for the fifth year when he went through the formalities of registration, the patentee shall pay the annual fee for the sixth year no later than June 3, 2002 in the amount as prescribed for the sixth year.

2.2.1.3 Surcharge

Where the patentee fails to pay the annual fee in time (not including the annual fee of the year in which the patent was granted), or where the fee has not been paid in full, the patentee may pay the fee or make up the insufficiency within six months from the expiration of the time limit within which the annual

fee is due.If the late payment is made less than one month after the date of the expiration of the time limit within which the annual fee is due,no surcharge shall be paid.Where the late payment is made more than one month after the date of expiration of the time limit,the surcharge in an amount calculated according to the following rules shall be paid:

(1)where the late payment is made more than one month but no more than two months after the date of expiration of the prescribed time limit,a surcharge of 5% of the annual fee shall be paid;

(2)where the late payment is made more than two months but no more than three months after the date of expiration of the prescribed time limit,a surcharge of 10% of the annual fee shall be paid;

(3)where the late payment is made more than three months but no more than four months after the date of expiration of the prescribed time limit,a surcharge of 15% of the annual fee shall be paid;

(4)where the late payment is made more than four months but no more than five months after the date of expiration of the prescribed time limit,a surcharge of 20% of the annual fee shall be paid; and

(5)where the late payment is made more than five months but no more than six months after the date of expiration of the prescribed time limit,a surcharge of 25% of the annual fee shall be paid.

Where,within six months after the expiration of the prescribed time limit,the shortage of annual fee or surcharge is paid but not paid in full,and another payment is necessary to make up the insufficiency,the annual fee and surcharge shall be complemented according to the surcharge standard for the period when the complementary payment is made.For example,the payment period for the surcharge of 5% of the annual fee is from May 10 to June 10,and the surcharge is 45 Yuan,but the payer paid 25 Yuan only.If the payer intends to make a complementary payment of the surcharge on June 15,the surcharge shall be 10% of the annual fee according to the surcharge standard for the period corresponding to the date of complementary payment. The amount of surcharge for this period is 90 Yuan,and therefore,

the patentee shall further pay 65 Yuan.

Where failure to pay or pay in full the annual fee and/or surcharge within the prescribed time limit leads to termination of the patent right, in the procedure for restoration of right, the patentee shall further pay or complement a surcharge of 25% of the annual fee in addition to payment of the annual fee.

2.2.2 Termination

Where, at the expiration of surcharge period of annual fee, the patentee still fails to pay or pay in full the annual fee or the surcharge, a Notification of Termination of Patent Right shall be made by examiner two months after the expiration of surcharge period of annual fee. Where the patentee does not request for restoration of right or where the request for restoration of right is not approved, the patent right shall be handled to be invalid, and the termination of patent right shall be announced in the Patent Gazette by the Patent Office after four months from the issuance of the Notification of Termination of Patent Right.

The patent right shall terminate from the date on which the time limit for payment of the annual fee expires.

Art.44.1(2)

2.3 Patentee Abandons Patent Right

After the grant of patent right, the patentee may request to abandon his patent right on his own initiative at any time. Where a patentee request to abandon his patent right, he shall submit a declaration of abandonment of patent right with certifying materials of agreement of the abandonment of the patent right signed or sealed by all the patentees attached, or only submit a declaration of abandonment of patent right signed or sealed by all the patentees. Where a patent agency is designated, the formalities of abandonment of patent right shall be gone through by the patent agency, with declaration of agreement of abandonment of patent right signed or sealed by all the patentees attached. Declarations of abandonment of patent right on the patentee's own initiative shall not have any additional conditions. The abandonment of patent right refers to the abandonment of the entire patent right. The declaration of partial abandonment of patent right shall be deemed not to have been made.

Where the declaration of abandonment of patent right does

not meet the requirements after examination,the examiner shall issue a Notification that Declaration Deemed Not to Have Been Made.Where it meets the requirements,the examiner shall send a Notification of Passing Examination on Formalities,register relevant matters in the Patent Register and announce them in the Patent Gazette.The date when the declaration of abandonment of patent right takes effect is the issuance date of the Notification of Passing Examination on Formalities,and the patent right abandoned by the patentee shall terminate from that date.The patentee shall not be allowed to request for revoking the declaration of abandonment of patent right unless there is qualified reason.Unless an inauthentic owner of the patent right as the patentee has already abandoned the patent right in bad faith,the authentic owner can not(effective legal documents shall be provided to prove it)request to revoke the declaration of abandonment of the patent right.

Rule 41.5

Where the applicant declares abandonment of patent for utility model under Article 9.1 and Rule 41.4,the Patent Office shall conduct registration and announcement of the declaration of abandonment of the patent right for utility model when the grant of the patent right for invention is announced.Where the abandonment of patent for utility model is declared in invalidation procedure,the Patent Office shall conduct registration and announcement of the declaration in time.The date when the declaration of abandonment of patent right for utility model takes effect is the date of the announcement of grant of patent right for invention,and the patent right for utility model which has been abandoned shall terminate from the same day.

Chapter 10 Evaluation Report of Patent

Art.61.2

Rule 56.1

1.Introduction

According to Article 61.2,where any infringement dispute relates to a patent for utility model or design,the People's Court or the patent administrative authority for patent affairs may ask the patentee or any interested party to furnish an evaluation report of patent made by the State Intellectual Property Office (hereinafter SIPO).

At the request of the patentee or the interested party,SIPO shall conduct search on the relevant utility model patent or design patent,analyzing and evaluating whether the patent is in conformity with the granting conditions provided in the Patent Law and its Implementing Regulations,and make an evaluation report of patent.

An evaluation report of patent is an evidence for the People's Court or the administrative authority for patent affairs to judge and deal with disputes over patent infringement.It is mainly used to determine whether it is necessary to suspend relevant procedures.An evaluation report of patent is not an administrative decision,so the patentee or the interested party can not apply for administrative reconsideration or institute administrative litigation in that regard.

2.Formal Examination of Request for Evaluation Report of Patent

Upon receiving the written request for an evaluation report of patent submitted by patentee or interested party,SIPO shall carry out formal examination.

Rules 56.1 & 57

2.1 The Object of a Request for Evaluation Report of Patent

The object of the request for an evaluation report of patent shall be the granted utility model patent or design patent,including those terminated or renounced.In the following circumstances, the request for an evaluation report of patent shall be deemed not to have been made:

(1)where the request is made on the utility model or design

patent application that has not been granted;

(2)where the request is made on the utility model or design patent which has been declared invalid in whole by the Patent Reexamination Board;or

(3)where SIPO has made an evaluation report of patent on the requested utility model patent or the design patent.

Rule 56.1

2.2 Eligibility as a Petitioner for Evaluation Report of Patent

According to Rule 56.1,the patentee or the interested party may request SIPO to make an evaluation report of patent. Wherein,the interested party refers to the person who,according to Article 60,has the right to file a lawsuit before the People's Court or requests the administrative authority for patent affairs to handle the matter.For example,the licensee of exclusive patent license contract and the licensee of common patent license contract who has been authorized right of action by the patentee. Where the petitioner is not the patentee or the interested party,the request for an evaluation report of patent shall be deemed not to have been made.Where the utility model or design patent is owned by several patentees,the petitioner may be some of the patentees.

Rule 56.2 & .3

2.3 Request for Evaluation Report of Patent

When making a request for an evaluation report of patent, the petitioner shall submit a request for an evaluation report of patent and other relevant documents.

(1)The request for an evaluation report of patent shall use the forms prescribed by SIPO.The patent number,the title of the invention-creation,the name of the petitioner and/or the patentee of the utility model or design patent shall be indicated in the request.Each request shall be limited to one utility model or design patent.

(2)The text upon which the evaluation report of patent will be made shall be stated in the request.The text shall be the published text of the utility model or design patent,or the text of utility model or design patent maintained valid in part by effective examination decision on request for invalidation.Where the text referred to by a request for an evaluation report of patent is

the text maintained valid in part by effective examination decision on request for invalidation,the petitioner shall indicate the number of relevant examination decision on request for invalidation.

(3)Where the petitioner is the interested party,relevant certification documents shall be submitted together with request for an evaluation report of patent.For example,where the petitioner is the licensee of exclusive patent license contract,the exclusive patent license contract signed with the patentee or its copy shall be submitted; where the petitioner is the licensee of common patent license contract authorized right of action by the patentee, the common patent license contract signed with the patentee or its copy and the certification of the authorization of right of action by the patentee shall be submitted.Where the above-mentioned patent license contract has been submitted to SIPO for record,the petitioner may not submit it,but shall indicate that in the request.

Where the request for an evaluation report of patent is not in conformity with the above provisions,SIPO shall notify the petitioner to make rectification within a specified time limit.

Rules 93,94
& 99.3

2.4 Fees

If petitioner files the request for an evaluation report of patent, but the request fee has not paid,or not paid in full within one month from the submitting date of the request,the request shall be deemed not to have been made.

2.5 Formalities Regarding Appointment of Representation

Relevant matters regarding the request for an evaluation report of patent can be handled by the petitioner or the patent agency appointed by the petitioner.Where the petitioner shall appoint a patent agency according to Article 19.1,but fails to meet this requirement,SIPO shall notify the petitioner to make a rectification within a specified time limit.

Where the petitioner is the patentee and a patent agency has been appointed for the whole term of the patent,while another patent agency is appointed to go through relevant formalities when requesting to make an evaluation report of patent,a power of attorney shall be submitted separately,and it shall indicate

that the scope of the authorized power is limited to relevant matters regarding evaluation report of patent; where the formalities regarding appointment of representation are not in conformity with relevant provisions,SIPO shall notify the petitioner to rectify within a specified time limit; if no rectification is made within the time limit or the rectification is not in conformity with the provisions,the appointment shall be deemed not to have been made; if relevant matters are handled by the petitioner himself, it shall be stated that he only handles matters regarding evaluation report of patent.

Where the petitioner is the interested party and a patent agency is appointed,a power of attorney shall be submitted,and the scope of authorized power shall be indicated; where the formalities regarding appointment of representation are not in conformity with relevant provisions,SIPO shall notify the petitioner to rectify within a specified time limit; if no rectification is made within the time limit or the rectification is not in conformity with the provisions,the appointment shall be deemed not to have been made.

2.6 Handling after Formal Examination

Rule 56.3

(1)Where,upon formal examination,the request for an evaluation report of patent is not in conformity with relevant provisions and needs to be rectified,SIPO shall issue Notification to Make Rectification,requiring the petitioner to make rectification within 15 days from the date of receipt of the notification; where no rectification is made within the specified time limit or the same defects still exists in the request after two rectifications, the request shall be deemed not to have been made.

(2)Where the request for an evaluation report of patent is deemed not to have been made,SIPO shall issue Notification that Request Deemed not to Have Been Made to the petitioner.

(3)Where the request for an evaluation report of patent is in conformity with relevant provisions after formal examination, it shall be transmitted timely to the designated department which is responsible for making an evaluation report patent.

According to Rule 57,before an evaluation report of patent is made,if there are several petitioners requesting to make an evaluation report of patent on the same utility model or design pa-

tent separately,SIPO shall accept all the requests,but make only one evaluation report of patent.

3.Evaluation of Patent

On receiving the request for an evaluation report of patent, the department which is responsible for making an evaluation report of patent shall,according to the provisions of this Chapter, assign an examiner to conduct search,analyze,and evaluate on the patent and make the report.

3.1 Checking the Request for Evaluation Report of Patent

First,the examiner shall check the request for an evaluation report of patent and the relevant documents.If any non-conformance is found,it shall be returned to relevant department to solve,and the reasons shall be explained.

3.2 Content of Patent Evaluation

3.2.1 Utility Model Patent

Content involved in an evaluation report of patent for a utility model includes:

(1)whether the utility model falls into the scope of subject matter which is nonpatentable according to Article 5 or Article 25,as to the evaluation standard,Chapter 1 of Part II shall apply;

(2)whether the utility model falls into objects prescribed in Article 2.3,as to the evaluation standard,Chapter 2,Section 6 of Part I shall apply;

(3)whether the utility model possesses practical applicability prescribed in Article 22.4,as to the evaluation standard,Chapter 5,Section 3 of Part II shall apply;

(4)whether the description of the utility model sufficiently disclose the claimed subject matter according to Article 26.3,as to the evaluation standard,Chapter 2,Section 2.1 of Part II shall apply;

(5)whether the utility model possesses novelty prescribed in Article 22.2,as to the evaluation standard,Chapter 6,Section 3 of PartIV shall apply;

(6)whether the utility model possesses inventive step prescribed in Article 22.3,Chapter 6,Section 4 of PartIV shall be

applied concerning the evaluation standard;

(7)whether the utility model is in conformity with Article 26.4,Chapter 2,Section 3.2 of Part II shall be applied concerning the evaluation standard;

(8)whether the utility model is in conformity with Rule 20.2,Chapter 2,Section 3.1.2 of Part II shall be applied concerning the evaluation standard;

(9)whether the amendment to the utility model patent is in conformity with Article 33,Chapter 2,Section 8 of Part I and Chapter 8,Section 5.2 of Part II shall be applied concerning the evaluation standard;

(10)whether the divisional utility model patent is in conformity with Rule 43.1,Chapter 6,Section 3.2 of Part II shall be applied concerning the evaluation standard;and

(11)whether the utility model is in conformity with Article 9,Chapter 3,Section 6 of Part II shall be applied concerning the evaluation standard.

3.2.2 Patent for Design

Content involved in an evaluation report of patent for a design includes:

(1)whether the design patent falls into the scope of subject matter which is nonpatentable according to Article 5 or Article 25,Chapter 3,Section 6.1 and 6.2 of Part I shall be applied concerning the evaluation standard;

(2)whether the design patent falls into objects prescribed in Article 2.4,Chapter 3,Section 7 of Part I shall be applied concerning the evaluation standard;

(3)whether the design patent is in conformity with Article 23.1, Chapter 5,Section 5 of Part IV shall be applied concerning the evaluation standard;

(4)whether the design patent is in conformity with Article 23.2, Chapter 5,Section 6 of Part IV shall be applied concerning the evaluation standard;

(5)whether the drawings or photographs of the design patent are in conformity with Article 27.2, Chapter 3,Section 4 of Part I shall be applied concerning the evaluation standard;

(6)whether the amendment to the design patent is in conformity with Article 33, Chapter 3,Section 10 of Part I shall be

applied concerning the evaluation standard;

(7)whether the divisional design patent is in conformity with Rule 43.1, Chapter 3,Section 9.4.2 of Part I shall be applied concerning the evaluation standard;and

(8)whether the design patent is in conformity with Article 9,Chapter 5,Section 8 of Part IV shall be applied concerning the evaluation standard.

3.3 Search

Generally,before making an evaluation report of patent for a utility model or a design,relevant search shall be conducted.

3.3.1 Utility Model Patent

The search shall direct to all claims of the utility model patent, however,if the subject matter of the utility model patent falls into the following circumstances,there is no need to make a search in that regard:

- (1)being not in conformity with Article 2.3;
- (2)falling into the scope of subject matter which is not patentable according to Article 5 or Article 25;
- (3)lacking practical applicability;
- (4)the description and claims fails to disclose the subject matter sufficiently clear and complete so as to enable a person skilled in the art to carry it out.

As to the specific requirements for the search,Chapter 7 of Part II shall apply.

3.3.2 Patent for Design

Search shall direct to all product designs as shown in the drawings or photos of the design patent and take the brief explanation into account.However,if the claimed designs of product fall into the following circumstances,there is no need to make a search in that regard:

- (1)being not in conformity with Article 2.4;
- (2)falling into the scope of the subject matter which is not patentable according to Article 5 or Article 25;
- (3)the drawings or photographs of the design patent fail to disclose the claimed designs of product clearly.

When conducting the search,the examiner shall search the

designs which have been made available to the public before the design patent's filing date in China. In order to determine whether there is a conflicting application, the examiner shall search all the design patents which are filed prior to the filing date of the patent being evaluated and published thereafter. In order to determine whether there is double patenting, the examiner shall search the published design patents which are filed on or before the filing date of the patent being evaluated.

Rule 57

4. Evaluation Report of Patent

SIPO shall make the evaluation report of patent within two months from receiving the eligible request for an evaluation report of patent and the fee for request.

If the patent being evaluated is in conformity with the granting conditions prescribed in the Patent Law and its Implementation Regulations, the examiner shall draw a clear conclusion in the evaluation report of patent.

If the patent being evaluated is not in conformity with the granting conditions prescribed in the Patent Law and its Implementation Regulations, the examiner shall give the evaluation opinions in detail, and draw a clear conclusion of the evaluated patent's nonconformity with the Patent Law and its Implementation Regulations.

The evaluation report of patent shall use the unified standard form made by SIPO, it shall be jointly signed by the examiner and the check person, and sealed by "the Special Stamp for Evaluation Report of Patent of the State Intellectual Property Office of the P.R.C.".

4.1 Content of Evaluation Report of Patent

The evaluation report of patent includes forms reflecting the level of relevance of the reference documents and the patent being evaluated, and the description of whether the patent is in conformity with granting conditions prescribed in the Patent Law and its Implementation Regulations.

4.1.1 The Form

Regarding the evaluation report of utility model patent, for requirements concerning how to fill in the items, Chapter 7, Sec-

tion 12 of Part II shall apply.

Regarding the evaluation report of design patent, the form shall clearly record the fields and databases to be searched, the reference documents obtained by the search, and the level of relevance of the reference document with the design patent being evaluated, etc. In General, the following symbols are used to express the level of relevance of the reference documents with the design patent being evaluated:

X: the document that when taken alone, prejudices the design patent's conformity with Article 23.1 or 23.2;

Y: the document that when combined with other such design documents cited in the report, prejudices the design patent's conformity with Article 23.2;

A: the document defining the general state of the design, i.e. the document that reflects part of the design features of the design patent or relevant prior design;

P: the intermediate document, that is the document published on dates falling between the filing date of the design patent and the claimed priority date, or the document that causes necessity to verify the priority of design patent;

E: the conflicting application document which is identical or substantially identical to the design patent;

R: the design patent document submitted by any entity or individual to the Patent Office on the filing date of the design patent being evaluated and constitutes identical invention-creation with it.

Among the above categories of documents, symbols X, Y, and A indicate the relevance of a reference document with the design patent in contents; symbols R and E indicate the relevance of a reference document with the design patent both in time and in contents; symbol P indicates the relevance of a reference document with the design patent in time, which shall be followed by a symbol of X, Y, E, or A indicating the relevance of the document in contents, and it is used under the circumstance that the priority of the design patent has not been verified.

4.1.2 The Description

The conclusion of evaluation shall be explained in the description. If the evaluated patent is not in conformity with the granting conditions

prescribed in the Patent Law and its Implementing Regulations, the examiner shall provide the evaluation opinion clearly and specifically.

(1) If the utility model patent is not in conformity with the conditions for granting prescribed in the Patent Law and its Implementing

Regulations, a specific evaluation and a definite conclusion shall be given, and reference documents shall be cited if necessary. For example, for claims which do not possess novelty and/or inventive step, the examiner shall evaluate each of them; for multiple dependent claims, the examiner shall evaluate each technical solution therein formed by referring to different claims respectively; for a claim which has parallel alternative solutions, the examiner shall evaluate each solution.

(2) If the design patent is not in conformity with the conditions for granting prescribed in the Patent Law and its Implementing Regulations, the evaluation and definite conclusion shall be given for each design, and reference documents shall be cited if necessary.

4.2 The Delivery of Evaluation Report of Patent

After the evaluation report of patent has been made, it shall be sent to the petitioner.

5. Consultation and Copying of Evaluation Report of Patent

According to Rule 57, after SIPO has made the evaluation report of patent, any entity or individual may consult or copy the report. Concerning the relevant procedures for consultation and copying, Chapter 4, Section 5.3 of Part V shall apply.

6. Correction of Evaluation Report of Patent

Where the department undertaking the evaluation of the patent finds that there is any mistake in the evaluation report of patent, the department may correct the evaluation report of patent on its own initiative. Where the petitioner thinks that in the evaluation report of patent there exists any mistake which needs to be corrected, he may request to correct the evaluation report of patent.

The corrected evaluation report of patent shall be sent to the petitioner timely.

6.1 Items Permitted to Be Corrected

Where any of the following mistakes exists in an evaluation report of patent, the following mistake may be corrected:

- (1) any mistake of bibliographic data or the word thereof;
- (2) any procedure mistake in making the evaluation report of patent;
- (3) any obvious mistake in applying the laws or regulations;
- (4) any obvious mistake in identifying the facts on which the conclusion relies; or
- (5) any other mistake that shall be corrected.

6.2 Initiation of the Procedure for Correction

(1) Initiated by the department undertaking the evaluation report of patent on its own initiative

Where the department undertaking the evaluation finds in the evaluation report of patent that there is a mistake needs to be corrected, it may initiate the procedure for correction on its own initiative.

(2) Initiated by the Petitioner on his Request

Where the petitioner thinks that in the evaluation report of patent there is any mistake that needs to be corrected, he may submit a request for correction within two months from the date of receipt of the evaluation report of patent.

In submitting the request for correction, the petitioner shall submit the request in written form of observations, and indicate therein the items intended to be corrected and grounds for correction, but may not amend the patent document during the procedure for correction.

6.3 Implementation and Termination of the Correction

After the initiation of the procedure for correction, the department undertaking the evaluation report shall set up a reviewing group which consists of a chief member, a first member and a second member, to review the original evaluation report of patent. A review conclusion shall be given by the reviewing group after deliberation according to the majority of votes. The examiner and the check person conducting the previous evaluation report shall not participate in the reviewing group.

If the reviewing group holds that the request for correction are not well grounded, and there is no mistake in the initial evaluation report of patent so that it needs not to be corrected, it shall explain the reasons as not to correct the evaluation report of patent in Notification of Reviewing Conclusion Concerning Evaluation Report of Patent issued to the petitioner.

If the reviewing group finds that the request for correction are well grounded, and the initial evaluation report of patent has a mistake that really needs to be corrected, it shall reissue an amended evaluation report of patent without the mistake, and indicate clearly in the amended evaluation report of patent that this report shall substitute the previous evaluation report of patent and the procedure terminates.

During the procedure for correction, normally the reviewing group does not need to conduct a supplementary search, unless the identification of facts has changed so as to make the previous search incomplete or inaccurate. Usually only one request can be submitted to correct the evaluation report of patent, however, for the amended evaluation report of patent issued by the reviewing group after a supplementary search, the petitioner may once again submit a request for correction.

Chapter 11 Provisions on Electronic Application

1.Introduction

According to Rule 2 of the Implementing Regulations, any formalities prescribed by the Patent Law and these Implementing Regulations shall be complied with in a written form or in any other form prescribed by the Patent Office. The "other form" prescribed by the Patent Office includes electronic form.

Electronic application refers to the patent application which is submitted, through Internet as the transmission media, to the Patent Office in electronic form complied with the provisions. Provisions concerning patent application and other documents of the Patent Law, its Implementing Regulations, and these Guidelines shall, except those regulating patent application and other documents submitted in paper form, apply to electronic application.

Format of electronic documents shall be otherwise stipulated by the Patent Office.

2.Electronic Application User

Electronic application user refers to the applicant or the patent agency that has already signed the User Registration Agreement of Electronic Patent Application System (hereinafter referred to as the User Registration Agreement) with the Patent Office, gone through the formalities of user registration, and obtained the user code and password.

2.1 Representative of Electronic Application

Where there are two or more applicants without appointing a patent agency, the electronic application user submitting the electronic application shall be the representative.

2.2 Electronic Signature

Electronic signature refers to the data attached in electronic documents submitted or sent through the Electronic Patent Application System of the Patent Office, for the use of identifying

the identity of the signatory and showing that the signatory has recognized the contents therein.

“Signed or sealed” mentioned in Rule 119.1 of the Implementing Regulations refers to the act to attach electronic signature in electronic application documents. Electronic signature in electronic application documents has the same legal effect with signature in paper documents.

3.Registration of Electronic Application User

Ways for registration of electronic application user include registration in person, registration by post, and online registration.

When going through the formalities of registration of electronic application user, user shall submit the Request for Registration of Electronic Application User, User Registration Agreement signed or sealed in duplicate, and certifying documents of user registration.

3.1 Request for Registration of Electronic Application User

The request for registration of electronic application user shall adopt the standard form made by the Patent Office. Name or title, type, identification number, nationality or the registered place, habitual residence or place of business office, detailed address and postal code of the registration requester shall be indicated in the request.

Where the registration requester is an entity, information of the handling person shall be written in the request.

3.2 Certifying Documents of User Registration

Where the registration applicant is an individual, a copy of identification card or other identity certificate signed or sealed by himself shall be submitted. Where the registration applicant is an entity, a copy of business license or organization certificate with the official seal of the entity affixed and a copy of identity certificate signed or sealed by the handling person shall be submitted. Where the registration applicant is a patent agency, a copy of registration certificate of the patent agency with its official seal affixed and a copy of identity certificate signed or sealed by the handling person shall be submitted.

3.3 Examination of the Request for Registration

Where the registration documents pass the examination, the Notification of Examination on Registration of Electronic Application and the user registration agreement sealed by the Patent Office shall be issued to the registration applicant, and the user code shall be given. Where it is registration in person, the password shall be set by the registration applicant on the spot; where it is registration by post, the password shall be informed to the registration applicant in the Notification of Examination on Registration of Electronic Application; where it is online registration, the password shall be preset by the registration applicant when submitting the request for registration.

Where the registration documents fail to pass the examination, for registration in person, the reasons for the failure of registration shall be explained to the registration applicant directly, and the registration materials shall not be accepted; for registration by post or online registration, the Notification of Examination on Registration of Electronic Application, in which reasons for the failure of registration shall be described, shall be sent to the registration applicant, and the registration materials shall not be returned.

3.4 Changes of Information of Electronic Application User

Where information such as password, detailed address, postal code, telephone number, fax number, Email address, and manner of information cue, etc. changes, the registered user shall log on the electronic application website to make changes online.

Where information such as name or title, type, identification card number, nationality or the registered place, habitual residence or place of business office, etc. changes, the registration user shall submit to the Patent Office the Request for Changing Information of Electronic Application User and relevant certifying documents to go through the formalities for change.

The registered user code shall not be changed.

4. Receipt and Acceptance of Electronic Application

The scope of acceptance concerning electronic application includes:

- (1)patent applications for invention,utility model and design;
- (2)international applications entering the national phase;
- and
- (3)requests for reexamination and invalidation.

4.1 Receipt of Electronic Application

The applicant shall submit electronic application documents in accordance with the prescribed file format,data standard,operation specification,and transmission mode.If the requirements are met,an electronic application return receipt of the documents received shall be sent; if the requirements are not met,the electronic documents shall be refused.

Where any entity or individual believes that a patent application shall be handled as secret patent application,it should not be submitted through Electronic Patent Application System.

4.2 Acceptance of Electronic Application

Where the content of electronic application obviously does not fall under the subject matters of patent application,it shall be not accepted.

Requirements for acceptance of electronic application shall comply with the provisions of Chapter 3,Section 2.1 of Part V of these Guidelines,and the procedure of acceptance is as follows:

- (1)Determining the submission date and the filing date

The date on which the Electronic Patent Application System of the Patent Office receives the electronic documents is the submission date.

The date on which the Electronic Patent Application System of the Patent Office receives the patent application documents which are in conformity with the Patent Law and its Implementing Regulations is the filing date.

- (2)Assignment of the application number

The Electronic Patent Application System of the Patent Office shall assign the application number automatically according to the type and filing date of the patent application and record the application number in the request and database.

- (3)Issuing notification

Where the electronic application complies with the requirements of acceptance after examination, the examiner shall issue the Notification of Acceptance and Notification to Pay Filing Fees; where the request for reduction or postponement of the payment has been submitted, the examiner shall issue the Notification of Acceptance and the Notification of Decision on Reduction of Fees.

5. Special Provisions on Examination of Electronic Application

5.1 Power of Attorney

Any applicant who appoints a patent agency for applying for a patent, or for having other patent matters to attend to in electronic form, shall submit a power of attorney in electronic form and the original paper power of attorney. Any applicant who appoints a patent agency for handling formalities of reduction or postponement of the payment shall declare it in the power of attorney in electronic form.

Where the general power of attorney has been deposited with the Patent Office, if the serial number of that general power of attorney has been indicated in the request when filling the application or has been indicated in the statement when going through the formality for a change of bibliographic data, the patent agency shall be exempted from submitting the general power of attorney in electronic form and the photocopy thereof.

5.2 Dissolution of Appointment and Resignation of Appointment

Where a patent agency has been appointed by the applicant of electronic application, at least one applicant shall be electronic application user when the formalities of dissolution or resignation of appointment are gone through. Where none of the applicants is the electronic application user, the formalities of dissolution or resignation of appointment shall not be gone through. The examiner shall issue the Notification that Request Deemed Not to Have Been Made and notify the party concerned to go through the formalities of Registration of Electronic Application User.

Where the formalities of dissolution are in conformity with the requirements, the applicant who has registered as electronic application user to go through the formalities shall be the representative

of the patent application.

Where the formalities of resignation are in conformity with the requirements, the applicant who has registered as electronic application user and has been indicated in the request shall be the representative of the patent application. Where no representative has been designated, the first named applicant who has registered as electronic application user shall be the representative of the patent application.

5.3 Changes due to Patent Agency Revoked

Where the patent agency appointed by the applicant is revoked by SIPO and the applicant appoints another patent agency, the new patent agency shall be the electronic application user.

Where the patent agency appointed by the applicant is revoked and the applicant does not appoint another patent agency, if the applicant is an individual or entity in mainland China and has registered as the electronic application user, the first named applicant shall be the representative. Where none of the applicants is the electronic application user, the examiner shall notify the applicant in paper form to go through the formalities of registration of electronic application user. According to Article 19.1 of the Patent Law, where the applicant is required to appoint a patent agency, the examiner shall notify the applicant to appoint a new patent agency which has registered as the electronic application user.

5.4 Changes due to Transfer of Right to Apply for a Patent (or Patent Right)

Where the request for a change of the name of applicant (or patentee) is made due to the transfer of right to apply for a patent (or patent right), and the applicant (or patentee) after the change does not appoint a patent agency, the applicant (or patentee) after the change shall be an electronic application user. Where the applicant (or patentee) after the change appoints a patent agency, the patent agency appointed shall be an electronic application user.

The formalities of making changes in bibliographic data shall be gone through in electronic form. Where the request for a

change in bibliographic data is made in paper form,the examiner shall issue the Notification that Request Deemed Not to Have Been Made to the party concerned.

5.5 Documents Required to be Submitted in Original Paper Form

Where applicant submits an electronic application which has been accepted,all formalities relating to patent application shall be gone through in electronic form.The documents which shall be submitted in original paper form according to provisions of the Patent Law,its Implementing Regulations,and the guidelines, such as certifying documents for reduction or postponement of the payment,power of attorney,certifying documents for change in bibliographic data,evidence in reexamination and invalidation procedures,etc.,shall be submitted in original paper form within the time limit prescribed in the Patent Law,its Implementing Regulations,and the Guidelines.

Where certifying documents for reduction or postponement of the payment are submitted when filing the patent application, the applicant shall submit the scanned copy of the paper certifying documents for reduction or postponement of the payment at the same time.

5.6 Transformation between Paper Application and Electronic Application

The applicant or patent agency may request to transform paper application to electronic application,except for those applications relating to national security or vital interests which shall be kept secret.

The applicant or patent agency submitting the request shall be the electronic application user,and the request shall be submitted in electronic form.Where the request passes the examination, the subsequent formalities shall be gone through in electronic form.Where the request is submitted in paper form,the examiner shall issue the Notification that Request Deemed Not to Have Been Made in paper form.

6.Delivery by Electronic Means

The Patent Office shall send all kinds of notifications and decisions to the electronic application user in electronic form

through the Electronic Patent Application System. The electronic application user shall receive the electronic notifications and decisions sent by the Patent Office in time. If the electronic application user fails to do so in time, no announcement delivery shall be made.

Where the electronic application user does not receive electronic notifications and decisions within 15 days from the date of issuance, the Patent Office may send the copy of the notifications and decisions in paper form.