

Regulations on Patent Commissioning

(Promulgated on March 4, 1991)

Chapter 1 General Principles

Article 1 With a view to guaranteeing the legitimate rights of patent agencies and consignors and ensuring the normal working of patent commissioning services, these Regulations hereof are formulated.

Article 2 Patent commissioning stated here denotes patent application or the handling of other patent-related affairs by patent agencies on behalf of their consignors and within their authorized powers.

Chapter 2 Patent Agencies

Article 3 Patent agencies stated here denote service organs that apply for patents or handle other patent-related affairs on behalf of their consignors and within their authorized powers.

Patent agencies include:

- (1) those that handle foreign patent-related affairs;
- (2) those that handle domestic patent-related affairs; and
- (3) law firms that handle domestic patent-related affairs.

Article 4 Establishment of a patent agency shall require the following conditions:

- (1) having a name, articles of association and fixed work place of its own;
- (2) having necessary capital and work installations;
- (3) being financially independent and able to meet civil liabilities independently; and
- (4) employing three or more special staff members qualified as patent agents and a proportionate number of likewise qualified spare-time working staff as stipulated by the China Administration of Patents (CAP).

Law firms engaged in patent commissioning must have special staff for the business stated in item (4) of the previous paragraph.

Article 5 To apply for the establishment of a patent agency at a patent administration, the following documents must be presented:

(1) a letter of application with the name, office space and responsible person's name stated;

(2) the articles of association of the patent agency;

(3) the names of patent agents and their certificates of qualification; and

(4) written proof of the amount of capital and installations of the patent of the agency.

Article 6 Patent agencies applying for the handling of domestic patent-related affairs or law firms applying for the same must have the consent of their governing authorities and their applications must be examined by patent administrations of provinces, autonomous regions or municipalities directly under the Central Government; in the absence of governing authorities, they may be directly examined by the later. Upon agreement, the examining authorities shall report the applications to CAP for approval.

Patent agencies applying to handle foreign-related patent affairs must go through procedures as stipulated in the Patent Law of the People's Republic of China. Such agencies, upon approval by CAP, can handle domestic patent affairs.

Article 7 Patent agencies, as of the date of approval, can start handling patent-commissioning business in accordance with law, enjoy civil rights and meet civil liabilities.

Article 8 Patent agencies shall deal with the following businesses:

(1) providing patent-related consulting agencies;

(2) writing on commission patent application documents and handling re-examination and other related affairs;

(3) raising disagreement, asking for the announcement of a patent right cancellation and other related affairs;

(4) handling the right of patent application, the transfer of patent right and patent permission and other related affairs;

(5) appointing patent agents to serve as patent advisors upon invitation; and

(6) other related matters.

Article 9 When patent agencies accept consignments and handle business, they shall

have a consignor's letter of commitment clearly stating commissioned items and powers.

If needed, a patent agency may designate a certain patent agent appointed by the consignor to handle the business.

Patent agencies may charge commissions in accordance with relevant regulations of the State.

Article 10 After accepting a commission, a patent agency shall not accept the commission of rival consignors concerning patents with the same content.

Article 11 Patent agencies shall employ as patent agents persons with Patent Agent Qualification Certificate". The latter shall go through necessary procedures, be given "Patent Agent Work Permit" by the former, and register at CAP.

Beginners shall not be issued "Patent Agent Work Permit" until after a full year of apprenticeship.

When patent agencies discharge their patent agents, they shall recover in time the latter's "Patent Agent Working Permit" and report such discharge to CAP.

Article 12 When patent agencies change their names, addresses and responsible persons, they shall report to CAP of such changes, which become effective only after approval by the latter.

When a patent agency goes out of business, it shall, after appropriately handling a unsettled affairs, report to the authorities that endorsed its opening and the latter shall be responsible for going through all necessary procedures as CAP.

Article 13 If an approved patent agency no longer meets the conditions stated in Article 4 of these Regulations hereof due to a change of circumstances and will not be able to meet such conditions within 1 year, the authorities that endorsed its opening should propose to CAP that it be canceled as a patent agency.

Chapter 3 Patent Agents

Article 14 Patent agents that these Regulations hereof stated denote bearers of "Patent Agent Qualification Certificate" and of "Patent Agent Working Permit".

Article 15 Chinese citizens who support Constitution as the People's Republic of China and meet the following conditions may apply to be patent agents:

- (1) over the age of 18 with full capacity for civil behaviors;
- (2) graduates of college departments of sciences (or with equivalent education) in command of one foreign language;
- (3) well-versed in the Patent Law and related legal knowledge; and
- (4) scientists or lawyers with upwards of 2 years of work experience.

Article 16 Persons who apply to be patent agents will obtain CAP "Patent Agent Qualification Certificate" after a panel of examination judges deem him or her qualified.

The panel of judges is composed of persons from CAP, State Council department and organizations of patent agents.

Article 17 Patent agents shall handle only patent commissioning services assigned by their patent agencies and shall not accept such services on their own.

Article 18 Patent agents shall handle patent commissioning services in two or more patent agencies simultaneously.

Before quitting their jobs at patent agencies, patent agents must appropriately conclude unsettled commissioned cases.

Article 19 In case bearers of "Patent Agent Qualification Certificate" fail to engage in patent commissioning business or patent-related management for 5 years, their "Patent Agent Qualification Certificates" are automatically rendered ineffective.

Article 20 Patent agents in the course of doing their professional work or within 1 year of their quitting their profession must not apply for patents.

Article 21 Patent agents lawfully handling patent commissions shall be protected by State laws and their work shall not be interfered with by any unit or individual.

Article 22 State organ staff are forbidden to work at patent agencies and engage in patent commissioning service in their spare-time.

Article 23 Patent agents have the responsibility to keep the inventions they get to know in the course of their rendering commission services unless relevant patent application have been made public.

Chapter 4 Punishment

Article 24 For one of the following offenses, the governing authorities or patent

administrations of the provinces, autonomous regions or municipalities directly under the Central Government may serve a warning to the offending patent agency; in cases of serious offense, CAP may punish it by ordering its close:

- (1) concealing facts in application;
- (2) changing major registration items by itself;
- (3) accepting and handling patent commission services unauthorizedly or beyond the approved business scope; and
- (4) other illegal activities.

Article 25 For one of the following offenses on the part of patent agents, relevant patent agencies may criticize the offenders if the cases are not serious; in cases of serious offenses, patent agencies may discharge the offenders and revoke their "Patent Agent Work Permit"; relevant patent administrations of the provinces, autonomous regions or municipalities directly under the Central Government may serve each offender a warning or CAP may revoke his or her "Patent Agent Qualification Certificate":

- (1) failing to fulfill his or her duties to the detriment of the interests of the consignors;
- (2) disclosing or stealing inventions of the consignors;
- (3) going beyond the powers of commission and causing damages to the interests of the consignors; and
- (4) charging through accepting and handling patent commission services without permission.

If the commissaries' economic losses has been caused by the behavior as stated in the previous paragraph, relevant patent agencies, after making economic pensions, may charge the patent agent in question according to a given proportion.

Article 26 If a patent agency ordered to close down as a punishment by CAP and a patent agent whose "Patent Agent Qualification Certificate" has been revoked do not agree with the decisions of punishment, they may appeal to CAP for re-examination; if they still fail to be satisfied with the CAP decision, they may bring the case to a people's court within 15 days of the receipt of the CAP decision.

Chapter 5 Supplementary Articles

Article 27 The right to interpret these Regulations hereof rests with CAP.

Article 28 These Regulations hereof become effective as of April 1, 1991. The Temporary Regulations on Patent Commissioning endorsed by the State Council on September 4, 1985 and promulgated by CAP on September 12 of the same year is simultaneously canceled.