

## 中華人民共和國專利代理條例

### 第一章 總則

第一條 為了保障專利代理機構以及委託人的合法權益，維護專利代理工作的正常秩序，制定本條例。

第二條 本條例所稱專利代理是指專利代理機構以委託人的名義，在代理許可權範圍內，辦理專利申請或者辦理其他專利事務。

### 第二章 專利代理機構

第三條 本條例所稱專利代理機構是指接受委託人的委託，在委託許可權範圍內，辦理專利申請或者辦理其他專利事務的服務機構。

專利代理機構包括：

- (一) 辦理涉外專利事務的專利代理機構；
- (二) 辦理國內專利事務的專利代理機構；
- (三) 辦理國內專利事務的律師事務所。

第四條 專利代理機構的成立，必須符合下列條件：

- (一) 有自己的名稱、章程、固定辦公場所；
- (二) 有必要的資金和工作設施；
- (三) 財務獨立，能夠獨立承擔民事責任；
- (四) 有三名以上具有專利代理人資格的專職人員和符合中國專利局規定的比例的具有專利代理人資格的兼職人員。

律師事務所開辦專利代理業務的，必須有前款第四項規定的專職人員。

## Regulations on Patent Commissioning

### 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

第五條 向專利管理機關申請成立專利代理機構，應當提交下列文件：

- (一) 成立專利代理機構的申請書，並寫明專利代理機構的名稱、辦公場所、負責人姓名；
- (二) 專利代理機構章程；
- (三) 專利代理人姓名及其資格證書；
- (四) 專利代理機構資金和設施情況的書面證明。

第六條 申請成立辦理國內專利事務的專利代理機構，或者律師事務所申請開辦專利代理業務的，應當經過其主管機關同意後，報請省、自治區、直轄市專利管理機關審查；沒有主管機關的，可以直接報請省、自治區、直轄市專利管理機關審查。審查同意的，由審查機關報中國專利局審批。

申請成立辦理涉外專利事務的專利代理機構，應當依照《中華人民共和國專利法》的有關規定辦理。辦理涉外專利事務的專利代理機構，經中國專利局批准的，可以辦理國內專利事務。

第七條 專利代理機構自批准之日起成立，依法開展專利代理業務，享有民事權利，承擔民事責任。

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.

第八條 專利代理機構承辦下列事務：

- (一) 提供專利事務方面的諮詢；
- (二) 代寫專利申請文件，辦理專利申請；請求實質審查或者復審的有關事務；
- (三) 提出異議，請求宣告專利權無效的有關事務；
- (四) 辦理專利申請權、專利權的轉讓以及專利許可的有關事務；
- (五) 接受聘請，指派專利代理人擔任專利顧問；
- (六) 辦理其他有關事務。

第九條 專利代理機構接受委託，承辦業務，應當有委託人具名的書面委託書，寫明委託事項和委託許可權。

專利代理機構可以根據需要，指派委託人指定的專利代理人承辦代理業務。專利代理機構接受委託，承辦業務，可以按照國家有關規定收取費用。

第十條 專利代理機構接受委託後，不得就同一內容的專利事務接受有利害關係的其他委託人的委託。

第十一條 專利代理機構應當聘任有《專利代理人資格證書》的人員為專利代理人。對聘任的專利代理人應當辦理聘任手續，由專利代理機構發給《專利代理人工作證》，並向中國專利局備案。初次從事專利代理工作的人員，實習滿一年後，專利代理機構方可發給《專利代理人工作證》。專利代理機構對解除聘任關係的專利代理人，應當及時收回其《專利代理人工作證》，並報中國專利局備案。

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

第十二條 專利代理機構變更機構名稱、地址和負責人的，應當報中國專利局予以變更登記，經批准登記後，變更方可生效。

專利代理機構停業，應當在妥善處理各種尚未辦結的事項後，向原審查機關申報，並由該機關報中國專利局辦理有關手續。

第十三條 已批准的專利代理機構，因情況變化不再符合本條例第四條規定的條件，並在一年內仍不能具備這些條件的，原審查的專利管理機關應當建議中國專利局撤銷該專利代理機構。

### 第三章 專利代理人

第十四條 本條例所稱專利代理人是指獲得《專利代理人資格證書》，持有《專利代理人工作證》的人員。

第十五條 擁護中華人民共和國憲法，並具備下列條件的中國公民，可以申請專利代理人資格：

- (一) 十八周歲以上，具有完全的民事行為能力；
- (二) 高等院校理工科專業畢業（或者具有同等學歷），並掌握一門外語；
- (三) 熟悉專利法和有關的法律知識；
- (四) 從事過兩年以上的科學技術工作或者法律工作。

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 all 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.

第十六條 申請專利代理人資格的人員，經本人申請，專利代理人考核委員會考核合格的，由中國專利局發給《專利代理人資格證書》。專利代理人考核委員會由中國專利局、國務院有關部門以及專利代理人的組織的有關人員組成。

第十七條 專利代理人必須承辦專利代理機構委派的專利代理工作，不得自行接受委託。

第十八條 專利代理人不得同時在兩個以上專利代理機構從事專利代理業務。  
專利代理人調離專利代理機構前，必須妥善處理尚未辦結的專利代理案件。

第十九條 獲得《專利代理人資格證書》，五年內未從事專利代理業務或者專利行政管理工作的，其《專利代理人資格證書》自動失效。

第二十條 專利代理人在從事專利代理業務期間和脫離專利代理業務後一年內，不得申請專利。

第二十一條 專利代理人依法從事專利代理業務，受國家法律的保護，不受任何單位和個人的干涉。

第二十二條 國家機關工作人員，不得到專利代理機構兼職，從事專利代理工作。

第二十三條 專利代理人對其在代理業務活動中瞭解的發明創造的內容，除專利申請已經公佈或者公告的以外，負有保守秘密的責任。

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.

#### 第四章 罰則

第二十四條 專利代理機構有下列情形之一的，其上級主管部門或者省、自治區、直轄市專利管理機關，可以給予警告處罰；情節嚴重的，由中國專利局給予撤銷機構處罰：

- (一) 申請審批時隱瞞真實情況，弄虛作假的；
- (二) 擅自改變主要登記事項的；
- (三) 未經審查批准，或者超越批准專利代理業務範圍，擅自接受委託，承辦專利代理業務的；
- (四) 從事其他非法業務活動的。

第二十五條 專利代理人有下列行為之一，情節輕微的，由其所在的專利代理機構給予批評教育。情節嚴重的，可以由其所在的專利代理機構解除聘任關係，並收回其《專利代理人工作證》；由省、自治區、直轄市專利管理機關給予警告或者由中國專利局給予吊銷《專利代理人資格證書》處罰：

- (一) 不履行職責或者不稱職以致損害委託人利益的；
- (二) 洩露或者剽竊委託人的發明創造內容的；
- (三) 超越代理許可權，損害委託人利益的；
- (四) 私自接受委託，承辦專利代理業務，收取費用的；

前款行為，給委託人造成經濟損失的，專利代理機構承擔經濟賠償責任後，可以按一定比例向該專利代理人追償。

#### 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 behaviors as stated in the

第二十六條 被處罰的專利代理機構對中國專利局撤銷其機構，被處罰的專利代理人對吊銷其《專利代理人資格證書》的處罰決定不服的，可以向中國專利局申請復議，不服復議決定的，可以在收到復議決定書十五日內，向人民法院起訴。

## 第五章 附則

第二十七條 本條例由中國專利局負責解釋。

第二十八條 本條例自一九九一年四月一日起施行。一九八五年九月四日國務院批准，同年九月十二日中國專利局發佈的《專利代理暫行規定》同時廢止。

previous paragraph, relevant patent agencies, after making economic compensations, 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.