TEE & HOWE
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NEWSLETTER

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What's New

Explanation on the Draft Amendment of the *Guidelines for Patent Examination* (Draft for Comments)

1. The Background of the Amendment

As the amended *Patent Law* has come into force on June 1st, 2021, the *Implementing Regulations of the Patent Law* is still in the process of amendment. In order to comprehensively guarantee the implementation of the *Patent Law* and the *Implementing Regulations of the Patent Law* at examination and practice level, the China National Intellectual Property Administration (CNIPA) has launched the adaptive amendment of the *Guidelines for Patent Examination*.

On the basis of careful research and argumentation, CNIPA has formed the *Draft Amendment of the Guidelines for Patent Examination (Draft for Comments)* (hereinafter referred to as "*the Draft*"). The amended contents of *the Draft* mainly focus on the supporting provisions of the *Patent Law* and the *Implementing Regulations of the Patent Law*.

2. The Key Amendments of *the Draft*

(1) Relevant provisions about improvement in design system, including the requirement of application documents and the standard of examination for **partial design** and **graphical user interface (GUI) products**, **examination of the significant difference for design**, domestic priority of design, filing and examination procedures of international application for design, etc.;

(2) Relevant procedural provisions about *the Patent Cooperation Treaty*, including statement of incorporation, reinstatement, addition and correction of rights, etc.;

(3) Relevant provisions about the **compensation of the duration of patent right**, including the compensation of the duration of granted patent and the drug patent;

(4) Relevant provisions about the **open licensing** of a patent, including submission and withdrawal of an open licensing declaration, registration and announcement of an open licensing, taking effect and submission for record of an opening license contract for exploitation, the formalities for requesting a reduction of the payment, etc.;

(5) Relevant provisions about examination for invalidation cases of **early settlement mechanism on drug patent disputes**, including submission of request and certifying documents, order of examination, basis of examination, status of examination and notification of termination;

(6) Relevant provisions about responding to **emergency affairs**, e.g. epidemics, etc., including the grace period and the *ex officio* extension of duration concerning novelty;

(7) Relevant provisions about improving the efficiency and quality of examination, including **the examination of obvious inventiveness for utility model, the examination of an application for a patent for invention involving computer programs, conducting examinations ex officio in the reexamination and invalidation procedures**, the provisions of the party concerned in a dispute over ownership of right appears in the invalidation procedures, **further improvement in the deferred examination system**, the judgment and examples for violating the principle of good faith;

(8) Relevant provisions about a solid implementation of the requirements of "streamline the administration, delegate power, and improve regulation and upgrade services", including relevant matters of evaluation report of patent, permission to submit colored drawings, simplification of submission means of the figure accompanying the abstract, exception of compulsory power of attorney, simplification of the procedures of divisional applications, simplification of the requirements of submission of the sequence listing, etc.;

(9) Relevant provisions about the reform of organization, including the adaptive amendment to the expression of Patent Reexamination Board, etc.

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