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Revisions to the Detailed Rules for the Implementation of the Patent Law of China and Examination Guidelines (Came into force on Jan 1, 2024)

1. Overview

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| a) Extension of patent right (PTA, PTE) | e) Rewards and Remunerations |
| b) Open licensing system | f) Domestic priority basis for a design |
| c) Partial designs | g) Preliminary examination |
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2. Revisions to note

a) PTA (compensation for the patent authorization period)

From June 1, 2021, by the Fourth Amendment of the China Patent Law, compensation for the patent period (PTA) had been newly introduced. The revision of the Detailed Rules for the Implementation clarifies the procedure for filing, the deadline for filing, and the method of calculating the duration of the PTA and PTE.

b) Open Licensing System

From June 1, 2021, the Fourth Amendment to the China Patent Law newly introduced the open licensing system. The revision of the Detailed Rules for the Implementation stipulates the deadline for patentees to apply for an open licensing system, the specific contents of the open licensing system declaration, and the exemption status of the open licensing system.

c) Introduction of partial design

On June 1, 2021, the Fourth Amendment to the China Patent Law determined that "partial designs" are subject to design patent protection. The revision of the Detailed Rules for the Implementation stipulates specific procedural details to indicate the drawings of the overall product and the contents of the part to be protected when filing a partial design.

d) Examination of Inventive step for utility models

In addition to the examinations for lack of novelty for utility models, the revision of the Detailed Rules for the Implementation has also introduced an examination for a clear lack of inventive step.

e) Rewards and Remunerations

According to the China Patent Law, if the employer and the inventor or designer have not agreed on the method and amount of remuneration stipulated in Article 15 of the China Patent Law, and have no agreement following the law, the inventor or designer must be compensated accordingly. As a result of the revision of the Detailed Rules for the Implementation, the minimum amount of incentive for inventions has been increased from 3,000 RMB or more to 4,000 RMB or more, and the minimum amount of incentive for utility models and design patents has been increased from 1,000 RMB or more to 1,500 RMB or more.

f) Domestic priority basis for a design

Previously, the domestic priority for designs was not allowed in China, but with this revision of the Detailed Rules for the Implementation, drawings of inventions or utility model applications can be used as the basis for domestic priority in design patent applications. At the same time, by claiming priority by the design patent applicant, the invention or utility model application on which the priority is based shall not be deemed to have been withdrawn.

g) Preliminary examination

In the previous preliminary examination procedure, after filing an appeal, a preliminary examination was usually conducted by the former examiner, but the revision of the implementation makes it more likely that the preliminary examination will be examined by a different examiner from the former examiner.

h) Change in delivery date (15 days) in case of electronic form

According to Article 4 (7) of the revised Detailed Rules for the Implementation, the notices delivered in electronic form by the CNIPA shall be delivered on the date of entry into the electronic system designated by the parties. In other words, if the office action is issued in electronic form, the grace period of 15 days is canceled.

i) Request for delayed examination

Under the current patent law, the applicant must request a substantive examination within three years after filing an invention patent application, and if the applicant does not request an examination after the deadline, the application will be deemed to have been withdrawn. On August 30, 2023, the CNIPA promulgated the "Measures for Delayed Examination of Invention Patent Applications" and introduced a system for delayed examinations. According to the revised Detailed Rules for the Implementation, "the applicant can request a delayed examination of a patent application. Applicants can use this system depending on the needs of the product business, and it is also possible to control the examination process.

j) Revisions of priority rights

A restoration of priority rights can be requested for a patent application for an invention or utility model within two months from the expiration of the priority period, if there is a justifiable reason for the domestic priority and the Paris priority.

A patent application for an invention or utility model application can add or amend priority rights within 16 months from the priority date or within four months from the filing date.

In a patent application or utility model application, if part of the claims or specification is missing or incorrectly filed, and priority is claimed, an "amendment by citation of the previous application on which the priority claim is based" may be made within two months from the filing date or within the specified period. The first filing date shall be withheld.

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