

English Translation¹ of Measures for Standardizing Patent Application Conduct (Draft for comment)

Article 1

In order to resolutely prohibit and combat all types of improper patent application conduct that violates the legislative purpose of the Patent Law, violates the principle of honesty and credibility, and does not seek to protect innovation, the present Measures have been formulated in accordance with the Patent Law and its Implementation Regulations, the Patent Agency Regulations and other relevant laws and regulations. Improper patent application conduct and improper patent applications shall be strictly examined and processed in accordance with the present Measures.

Article 2

The improper patent application conduct referred to in the present Measures shall consist of an act by any work unit or individual, either alone or in conjunction with another, of submitting any type of patent application, acting as an agent for a patent application, assigning a patent application right or patent right, or the like that is not based on actual inventive and creative activity, and seeks to gain improper benefit or fabricate innovative performance.

The following types of conduct shall be deemed improper patent application conduct under the present Measures:

(1) the simultaneous or successive submission of multiple patent applications that are obviously the same in inventive creation content, or are essentially formed of simple combinations of different inventive creation characteristics or elements;

¹ THE USPTO IS PROVIDING THIS TRANSLATION SOLELY AS A CONVENIENCE TO THE ENGLISH-READING PUBLIC. WE HAVE ATTEMPTED TO PROVIDE AN ACCURATE ENGLISH TRANSLATION OF THE CHINESE DOCUMENT, BUT DUE TO THE NUANCES IN TRANSLATING FROM CHINESE TO ENGLISH, SLIGHT DIFFERENCES MAY EXIST. WE WILL MAKE EVERY EFFORT TO CORRECT ERRORS BROUGHT TO OUR ATTENTION.

(2) the submission of a patent application with fabricated, falsified or altered inventive creation contents, test data or technical effects; copied, simply replaced, or recombined existing technologies or existing designs; or the like;

(3) the submission of an inventive creation patent application that is obviously inconsistent with the applicant's actual research and development capability and resource conditions;

(4) the submission of a patent application with inventive creation contents that have been randomly generated primarily using a computer program or other technology;

(5) the submission of a patent application the inventive creation of which has been deliberately devised to evade patentability examination and which is obviously inconsistent with technical improvement or common sense in design; or the innovative creation of which affords no actual value in the protection thereof, is degraded, consists of ornate phrasing, has an unnecessarily narrowed scope of protection, or lacks content with any significance with regard to search and examination;

(6) the submission of multiple patent applications that are substantially associated with or under the control of a specific applicant in a scattered or temporally staggered manner or at different locations in order to avoid regulatory measures against improper patent applications;

(7) the active submission, without substantive legal or technical necessity, of multiple divisional applications based on an original application with good prospects of being granted;

(8) the buying or selling of patent application rights or patent rights other than for the implementation of patented technologies, designs, or other legitimate and reasonable legal purposes; or the false changing of the inventor or designer;

(9) an act of inducing, abetting, or conspiring with another by a patent agency, patent attorney, or other institution or individual, who knows or should know of an improper patent application and acts as an agent or assists another in implementing various types of improper patent applications;

(10) other improper patent application conduct and related conduct that violates the principle of honesty and credibility and disrupts the normal order of patent work.

Article 3

In the event the State Intellectual Property Office shall discover or come to know by report in the course of patent application acceptance, preliminary examination, substantive examination, or reexamination, or in the course of the PCT international phase, and make an initial determination to the effect that improper patent application conduct as referred to in these Measures has occurred, it may form a special examination team or authorize an examiner to initiate special examination procedures in accordance with the present Measures, conduct batch and centralized processing, notify applicants, request them to immediately halt the related conduct and actively withdraw

relevant patent applications or requests for legal procedures within a specified time limit, or state their opinions.

In the event the applicant shall not agree with a preliminary determination of improper patent application conduct, he shall state his opinion within the specified time limit and submit ample supporting materials. If the event he shall fail to respond within the time limit without justifiable cause, the related patent application shall be deemed to have been withdrawn, and the related legal procedures shall be deemed to have not been submitted.

In the event the State Intellectual Property Office shall still consider improper patent application conduct to have occurred as described in these Measures after the applicant has stated his opinion, it may reject the relevant patent application in accordance with the law, or refuse to approve the request for relevant legal procedures.

If the applicant does not agree with the above decision by the State Intellectual Property Office, he may file an application for administrative reconsideration, a reexamination request, or an administrative lawsuit pursuant to law.

Article 4

The State Intellectual Property Office may, depending on the circumstances, not reduce the payment of patent fees for a patent application determined to be improper. In the event payment has been reduced, payment of the amount by which the fees have been reduced may be demanded.

For applicants presenting severe circumstances or who are repeat offenders, the patent application fees shall not be reduced within five years of the date of determining that improper patent application conduct has occurred.

Article 5

The All-China Association of Patent Attorneys shall impose self-disciplinary measures against patent agencies or patent agents who have engaged in improper patent application conduct as described in the present Measures, Article 2, Paragraph 2, Subparagraph (9). In cases of severe or repeat violations, the State Intellectual Property Office or an agency that administers patent work shall impose a corresponding punishment according to laws and regulations.

For other institutions or individuals who have engaged in the above conduct, a department that administers patent work shall impose penalties in accordance with the related provisions on investigating and punishing conduct by unqualified agencies, or coordinate with market supervision and management departments to impose penalties in accordance with the anti-unfair competition law, advertising law, and the like.

Article 6

Departments that administer patent work and patent agencies shall timely report to the State Intellectual Property Office if they discover or learn of improper patent application conduct based on reports.

Departments that administer patent work shall implement relevant measures in accordance with the requirements of relevant policy documents for work units or individuals that are determined to have engaged improper patent application conduct.

Article 7

A work unit or individual who has committed an act listed in Article 2 under severe circumstances and is suspected of having committed a crime shall be transferred to a relevant agency to pursue criminal liability in accordance with the law.

Article 8

The present Measures shall enter into force on the date of promulgation.