

Administrative Rules

Order of the State Intellectual Property Office

(No. 55)

The Guidelines for Patent Examination published on May 24, 2006 and effective from July 1, 2006 have been amended in accordance with Rule 122 of Implementing Regulations of the Patent Law of the People's Republic of China. The amended Guidelines for Patent Examination are hereby promulgated and shall come into force on February 1, 2010.

Commissioner: Tian Lipu

January 21, 2010

Order of the State Intellectual Property Office

(No. 56)

The Measures for Registration of Pledge of Patent Rights, which have been deliberated and adopted at the executive meeting of the State Intellectual Property Office, are hereby promulgated, and shall come into force on October 1, 2010.

Commissioner: Tian Lipu

August 26, 2010



Measures for Registration of Pledge of Patent Rights

Article 1 To enhance patent utilization and financing, safeguard the materialization of creditors' rights and standardize registration of the pledge of the patent rights, these Measures are formulated pursuant to the Property Law of the People's Republic of China, the Guarantee Law of the People's Republic of China, the Patent Law of the People's Republic of China and other relevant provisions.

Article 2 The State Intellectual Property Office is responsible for the registration of the pledge of patent rights.

Article 3 The pledger and the pledgee of a patent right shall enter into a written pledge contract. A pledge contract may either be a separately concluded contract or a pledge clause of the master contract.

Article 4 The pledge of a jointly owned patent right shall be based on the consent of other co-owners, unless it is otherwise agreed upon by all co-owners.

Article 5 To pledge a patent right, a foreigner, a foreign enterprise or any other foreign organization with no residential or business domicile in China shall authorize a lawfully established patent agency to handle the registration formalities.

To pledge a patent right, a Chinese entity or individual may authorize a lawfully established patent agency to handle the registration formalities.

Article 6 The parties concerned may mail or directly submit the relevant documents for the registration formalities for a pledge of patent rights.

Article 7 To apply for the registration of a pledge of patent rights, the parties concerned shall submit the following documents to the State Intellectual Property Office:

(1) An Application Form for the Registration of Pledge of Patent Rights which has been affixed with the signature or seal of both the pledger and the pledgee;

(2) A patent right pledge contract;

(3) The identity certificates of both parties;

(4) Power of attorney which indicates the specific scope of authority, if any representation is involved; and

(5) Other documents as required.

If the patent right has been assessed, an asset assessment report shall also be submitted.

Except for identity certificates, all other documents submitted by the parties concerned shall be in Chinese. If any identity certificate is in a foreign language, the parties concerned shall attach it with a Chinese version, or it shall be deemed as a failure to submit.

For documents mentioned in Paragraphs 1 and 2 of this Article, the parties concerned may submit the electronically-scanned copies thereof.

Article 8 The State Intellectual Property Office shall notify the applicants after receiving the application documents for the registration of pledge of patent rights.

Article 9 A patent right pledge contract sub-

mitted by the parties concerned shall cover the following contents necessary for the registration of the pledge:

- (1) Name or title and address of the parties concerned;
- (2) Type and amount of the guaranteed credit;
- (3) Term for the debtor to fulfill obligation;
- (4) Quantity of the titles of the patent right (s) and the name, number, date of application and date of publication for grant of each title;
- (5) Scope of guarantee of the pledge.

Article 10 In addition to the contents mentioned in Article 9 of these Measures, the parties concerned may stipulate the following matters in a patent right pledge contract:

- (1) Payment of the annual fee of the patent right during the term of pledge;
- (2) Assignment and the license for exploitation of the patent right during the term of pledge;
- (3) Measures to be taken when the patent right is declared invalid or ownership of the patent right changes; and
- (4) Delivery of correlative technical materials when the right of pledge is realized.

Article 11 The State Intellectual Property Office shall, within 7 working days after receiving the application documents for the registration of a pledge of patent right, examine them and make a decision to grant or not.

Article 12 If an application for the registration of a pledge of patent right passes the examination, the State Intellectual Property Office shall put it on the Patent Gazette and send a Notice on the Approval of Registration of Pledge of Patent Rights to the parties

concerned. The right of pledge shall be established at the time when the pledge is registered by the State Intellectual Property Office.

Under any of the following circumstances, the State Intellectual Property Office shall make a decision of disapproval and send a Notice on the Disapproval of Registration of Pledge of Patent Rights to the parties concerned:

- (1) The pledger is not the same party as the patentee recorded in the patent register;
- (2) The patent right has already expired or has been declared invalid;
- (3) The patent application has not been granted a patent right;
- (4) The annual fee of the patent right has become overdue;
- (5) The invalidation procedure of the patent right has been initiated;
- (6) Protective measures have been taken for the patent right as there is a dispute over its ownership or as the People's Court so orders, and as a result the pledge of the patent right has been suspended;
- (7) The term during which the debtor fulfills obligation exceeds the valid term of the patent right;
- (8) It is stipulated in the pledge contract that the patent right shall be owned by the pledgee if the pledgee is not compensated at the expiry of the term for fulfilling obligation;
- (9) The pledge contract does not conform to Article 9 of these Measures;
- (10) The patent right under pledge is owned by several parties and the pledge is not made upon the consent of all co-owners;
- (11) An application for the registration of the



pledge has been filed and the patent right is under pledge; or

(12) Any other circumstances under which the registration application shall be rejected.

Article 13 During the term of pledge, if the State Intellectual Property Office discovers that the registration of the pledge has been and is still under any of the circumstances described in Paragraph 2 of Article 12 of these Measures, or any other circumstances under which the Registration of a Pledge of Patent Right shall be revoked, it shall revoke the registration of the pledge and send a Notice on Revocation of the Registration of Pledge of Patent Right to the parties concerned.

Once the registration of pledge of patent right is revoked, the registration shall be void ab origine.

Article 14 The State Intellectual Property Office shall announce the following registration items of a pledge of patent right on the Patent Gazette: pledger, pledgee, main classification number, patent number, date of publication for grant, date of pledge registration, etc.

Where a pledge of patent right is changed or canceled after registration, the change or cancellation shall be registered and announced by the State Intellectual Property Office.

Article 15 During the term of pledge of a patent right, the State Intellectual Property Office shall not handle formalities for the waiver of the patent right if the pledger fails to provide evidentiary materials on the pledgee's consent to his waiver of the right.

Article 16 During the term of pledge of a patent right, the State Intellectual Property Office shall not handle formalities for the registration of the assign-

ment of patent right or for the filing of the patent exploitation contract if the pledger fails to provide evidentiary materials on the pledgee's consent to the transfer of the patent right or the licensing of the exploitation thereof.

In case the pledger assigns the patent right or grants a license to another party to exploit the patent right, the assignment fee or royalty fee shall be paid to the pledgee to settle debt ahead of the agreed term or be placed in escrow.

Article 17 If, during the term of pledge of a patent right, the name or title or address of a party concerned, the category or amount of the guaranteed principal credit or the scope of guarantee of the pledge changes, the parties concerned shall, within 30 days after the change occurs, request formalities for the change of registration of the pledge at the State Intellectual Property Office upon the strength of an agreement on the change, the original Notice on the Approval of Registration of Pledge of Patent Rights and other relevant documents.

Article 18 Under any of the following circumstances, the party concerned shall apply to the State Intellectual Property Office for canceling the registration of the pledge upon the strength of the Notice on the Approval of Registration of Pledge of Patent Rights and other relevant certificates:

(1) The debtor has fulfilled obligation in time or the pledger has paid off the debt guaranteed by the pledge ahead of the agreed term;

(2) The right of pledge has been realized;

(3) The pledgee waives the right of pledge;

(4) The pledge contract is annulled or revoked as a result of the annulment or revocation of the mas-

ter contract; or

(5) Any other circumstances under which the right of pledge is eliminated as prescribed by law.

After receiving an application for cancellation of registration, the State Intellectual Property Office shall issue a Notice on the Cancellation of the Registration of Pledge of Patent Right to the parties concerned upon examination. The registration of the pledge shall become invalid from the day of cancellation.

Article 19 Where a patent right is declared invalid or terminated during the term of pledge, the State Intellectual Property Office shall notify the pledgee of the fact.

Article 20 Where any patentee fails to pay the

annual fee for a patent right under pledge as required, the State Intellectual Property Office shall notify the pledgee at the same time when distributing a payment notice to the patentee.

Article 21 The power to interpret these Measures shall remain with the State Intellectual Property Office.

Article 22 These Measures shall come into force on October 1, 2010. The Interim Measures for the Registration of a Contract of Pledge of Patent Rights issued by the State Patent Office of the People's Republic of China on September 19, 1996 shall be abolished simultaneously.

Order of the State Intellectual Property Office

(No. 57)

The Provisions on Patent Electronic Filing, which have been deliberated and adopted at the executive meeting of the State Intellectual Property Office, are hereby promulgated, and shall come into force on October 1, 2010.

Commissioner: Tian Lipu

August 26, 2010