

中华人民共和国专利代理条例

Regulations on Patent Commissioning

第一章 总则

Chapter 1 General Principles

第一条 为了保障专利代理机构以及委托人的合法权益，维护专利代理工作的正常秩序，制定本条例。

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.

第二条 本条例所称专利代理是指专利代理机构以委托人的名义，在代理权限范围内，办理专利申请或者办理其他专利事务。

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.

第二章 专利代理机构

Chapter 2 Patent Agencies

第三条 本条例所称专利代理机构是指接受委托人的委托，在委托权限范围内，办理专利申请或者办理其他专利事务的服务机构。

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.

专利代理机构包括：

Patent agencies include:

- (一) 办理涉外专利事务的专利代理机构；
- (二) 办理国内专利事务的专利代理机构；
- (三) 办理国内专利事务的律师事务所。

- (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.

第四条 专利代理机构的成立，必须符合下列条件：

Article 4 Establishment of a patent agency shall require the following conditions:

- (一) 有自己的名称、章程、固定办公场所；
- (二) 有必要的资金和工作设施；
- (三) 财务独立，能够独立承担民事责任；
- (四) 有三名以上具有专利代理人资格的专职人员和符合中国专利局规定的比例的具有专利代理人资格的兼职人员。

- (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

律师事务所开办专利代理业务的，必须有前款第四项规定的专职人员。

第五条 向专利管理机关申请成立专利代理机构，应当提交下列文件：

- (一) 成立专利代理机构的申请书，并写明专利代理机构的名称、办公场所、负责人姓名；
- (二) 专利代理机构章程；
- (三) 专利代理人姓名及其资格证书；
- (四) 专利代理机构资金和设施情况的书面证明。

第六条 申请成立办理国内专利事务的专利代理机构，或者律师事务所申请开办专利代理业务的，应当经过其主管机关同意后，报请省、自治区、直辖市专利管理机关审查；没有主管机关的，可以直接报请省、自治区、直辖市专利管理机关审查。审查同意的，由审查机关报中国专利局审批。申请成立办理涉外专利事务的专利代理机构，应当依照《中华人民共和国专利法》的有关规定办理。办理涉外专利事务的专利代理机构，经中国专利局批准的，可以办理国内专利事务。

第七条 专利代理机构自批准之日起成立，依法开展专利代理业务，享有民事权利，承担民事责任。

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 latter. 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.

第八条 专利代理机构承办下列事务：

- (一) 提供专利事务方面的咨询；
- (二) 代写专利申请文件，办理专利申请；请求实质审查或者复审的有关事务；
- (三) 提出异议，请求宣告专利权无效的有关事项；
- (四) 办理专利申请权、专利权的转让以及专利许可的有关事务；
- (五) 接受聘请，指派专利代理人担任专利顾问；
- (六) 办理其他有关事务。

第九条 专利代理机构接受委托，承办业务，应当有委托人具名的书面委托书，写明委托事项和委托权限。

专利代理机构可以根据需要，指派委托人指定的专利代理人承办代理业务。专利代理机构接受委托，承办业务，可以按照国家有关规定收取费用。

第十条 专利代理机构接受委托后，不得就同一内容的专利事务接受有利害关系的其他委托人的委托。

第十一条 专利代理机构应当聘任有《专利代理人资格证书》的人员为专利代理人。对聘任的专利代理人应当办理聘任手续，由专利代理机构发给《专利代理人工作证》，并向中国专利局备案。初次从事专利代理工作的人员，实习满一年后，专利代理机构方可发给《专利代理人工作证》。专利代理机构对解除聘任关系的专利代理人，应当及时收回其《专利代理人工作证》，并报中国专利局备案。

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

第十二条 专利代理机构变更机构名称、地址和负责人的，应当报中国专利局予以变更登记，经批准登记后，变更方可生效。

专利代理机构停业，应当在妥善处理各种尚未办结的事项后，向原审查机关申报，并由该机关报中国专利局办理有关手续。

第十三条 已批准的专利代理机构，因情况变化不再符合本条例第四条规定的条件，并在一年内仍不能具备这些条件的，原审查的专利管理机关应当建议中国专利局撤销该专利代理机构。

第三章 专利代理人

第十四条 本条例所称专利代理人是指获得《专利代理人资格证书》，持有《专利代理人工作证》的人员。

第十五条 拥护中华人民共和国宪法，并具备下列条件的中国公民，可以申请专利代理人资格：

- (一) 十八周岁以上，具有完全的民事行为能力；
- (二) 高等院校理工科专业毕业（或者具有同等学历），并掌握一门外语；
- (三) 熟悉专利法和有关的法律知识；
- (四) 从事过两年以上的科学技术工作或者法律工作。

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.

第十六条 申请专利代理人资格的人员，经本人申请，专利代理人考核委员会考核合格的，由中国专利局发给《专利代理人资格证书》。专利代理人考核委员会由中国专利局、国务院有关部门以及专利代理人的组织的有关人员组成。

第十七条 专利代理人必须承办专利代理机构委派的专利代理工作，不得自行接受委托。

第十八条 专利代理人不得同时在两个以上专利代理机构从事专利代理业务。
专利代理人调离专利代理机构前，必须妥善处理尚未办结的专利代理案件。

第十九条 获得《专利代理人资格证书》，五年内未从事专利代理业务或者专利行政管理工作的，其《专利代理人资格证书》自动失效。

第二十条 专利代理人在从事专利代理业务期间和脱离专利代理业务后一年内，不得申请专利。

第二十一条 专利代理人依法从事专利代理业务，受国家法律的保护，不受任何单位和个人的干涉。

第二十二条 国家机关工作人员，不得到专利代理机构兼职，从事专利代理工作。

第二十三条 专利代理人对其在代理业务活动中了解的发明创造的内容，除专利申请已经公布或者公告的以外，负有保守秘密的责

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
任。

第四章 罚则

第二十四条 专利代理机构有下列情形之一的，其上级主管部门或者省、自治区、直辖市专利管理机关，可以给予警告处罚；情节严重的，由中国专利局给予撤销机构处罚：

- (一) 申请审批时隐瞒真实情况，弄虚作假的；
- (二) 擅自改变主要登记事项的；
- (三) 未经审查批准，或者超越批准专利代理业务范围，擅自接受委托，承办专利代理业务的；
- (四) 从事其他非法业务活动的。

第二十五条 专利代理人有下列行为之一，情节轻微的，由其所在的专利代理机构给予批评教育。情节严重的，可以由其所在的专利代理机构解除聘任关系，并收回其《专利代理人工作证》；由省、自治区、直辖市专利管理机关给予警告或者由中国专利局给予吊销《专利代理人资格证书》处罚：

- (一) 不履行职责或者不称职以致损害委托人利益的；
- (二) 泄露或者剽窃委托人的发明创造内容的；
- (三) 超越代理权限，损害委托人利益的；
- (四) 私自接受委托，承办专利代理业务，收取费用的；

前款行为，给委托人造成经济损失的，专利代理机构承担经济赔偿责任后，可以按一定比例向该专利代理人追偿。

commission services unless relevant patent application have been made public.

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

第二十六条 被处罚的专利代理机构对中国专利局撤销其机构,被处罚的专利代理人对吊销其《专利代理人资格证书》的处罚决定不服的,可以向中国专利局申请复议,不服复议决定的,可以在收到复议决定书十五日内,向人民法院起诉。

第五章 附则

第二十七条 本条例由中国专利局负责解释。

第二十八条 本条例自一九九一年四月一日起施行。一九八五年九月四日国务院批准,同年九月十二日中国专利局发布的《专利代理暂行规定》同时废止。

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.