Measures for the Administration of Patent Priority Examination of the PRC

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

Article 1 — These Measures are formulated in accordance with the relevant provisions of the Patent Law of the People's Republic of China (hereinafter referred to as the "Patent Law") and the Implementing Rules of the Patent Law of the People's Republic of China (hereinafter referred to as the "Implementing Rules of the Patent Law") for the purposes of further advancing the building of China into an intellectual property powerhouse and regulating the work of patent priority examination.

Article 2 — The work of patent priority examination shall adhere to the leadership of the Communist Party of China, pursue high-quality development, help optimize the business environment, support the development of new quality productive forces, and promote the building of an innovative country.

Article 3 — The National Intellectual Property Administration (CNIPA) shall be responsible for the administration of patent priority examination, accept and examine requests for priority examination,

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strengthen the support of examination resources, and improve the quality and efficiency of examination. The provincial intellectual property administrations shall be responsible for recommending requests for priority examination within their respective administrative regions.

CNIPA may accept requests for priority examination recommended by the relevant competent departments of the State Council in accordance with these Measures.

Chapter II — Scope of Application

Article 4 — These Measures shall apply to priority examination of the following patent applications or cases:

(1) invention patent applications that are in the substantive examination stage and for which no first action has been taken, where "first action" means that an examiner has commenced examination and issued a notification;

(2) utility model and design patent applications;

(3) reexamination cases of invention, utility model and design patent applications (hereinafter referred to as "reexamination cases"); and

(4) invalidation cases of invention, utility model and design patents (hereinafter referred to as "invalidation cases").

Priority examination conducted under bilateral or multilateral agreements concluded between CNIPA and the patent examination authorities of other countries or regions, or expedited examination conducted after passing the pre-examination of a national intellectual property protection center or rapid rights-protection center, shall be handled in accordance with the relevant provisions and shall not be subject to these Measures.

Article 5 — Where a patent application or reexamination case has significant innovation value and prospects for transformation and application, the patent applicant or reexamination requester may request priority examination under any of the following circumstances:

(1) where it involves emerging industries and future industries, or the tackling of key and core technologies;

(2) where it involves industries specially encouraged by the people's government at the provincial level or at the level of a city divided into districts;

(3) where the patent applicant or reexamination requester has already implemented the invention industrially or has made preparations for industrial implementation, or where there is evidence that another party is implementing the invention-creation;

(4) where, after a patent application on the same subject matter was first filed in China, a request for substantive examination is subsequently filed in another country or region in respect of that Chinese patent application; or

(5) other circumstances of major significance to the national interest or the public interest.

Article 6 — Where an invalidation case falls under any of the following circumstances, the invalidation requester or the patentee may request priority examination:

(1) where an infringement dispute has arisen in respect of the patent involved, and the parties have requested the local intellectual property administration to handle it or have filed a lawsuit with a people's court;

(2) where a dispute has arisen in respect of the patent involved, and the parties have requested CNIPA to conduct an administrative adjudication or mediation of a major patent infringement dispute, an administrative adjudication under the early resolution mechanism for drug patent disputes, or mediation of a dispute concerning the implementation of an open patent license;

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(3) where a dispute has arisen over the license contract for the patent involved, and the parties have requested an arbitration institution to arbitrate; or

(4) where the patent involved is of major significance to the national interest or the public interest.

The local intellectual property administrations and people's courts specified in item (1) of the preceding paragraph, and the arbitration institutions specified in item (3) thereof, may file requests for priority examination of invalidation cases concerning the patents involved.

Article 7 — Patent agencies providing services for patent applicants or parties to cases in requesting priority examination shall maintain good credit and a high level of professional competence and service, and conscientiously fulfill their industry self-discipline responsibilities.

Article 8 — Priority examination shall generally not be granted to a patent application or case under any of the following circumstances:

(1) where the patent application is a divisional application whose parent application has already been granted expedited examination;

(2) where, in the case of an invention patent application, the applicant has also filed a utility model application for the same invention-creation on the same day;

(3) where the patent application, reexamination case or invalidation case has already been granted priority examination or another form of expedited examination within its respective examination procedure; or

(4) where there is evidence that a patent application for which priority examination is requested under item (4) of Article 5 of these Measures clearly has no prospect of being granted.

Chapter III — Filing of Requests

Article 9 — Where there are two or more patent applicants, reexamination requesters or patentees, a request for priority examination filed under Article 5 or paragraph 1 of Article 6 of these Measures shall be subject to the consent of all applicants, all reexamination requesters or all patentees.

Article 10 — A patent application or case for which priority examination is requested shall be filed by means of an electronic application that meets the requirements.

Article 11 — When filing a request for priority examination of an invention, utility model or design patent application, the applicant shall submit a request for priority examination and materials related to the applicable circumstances specified in Article 5 of these Measures; except in the circumstances specified in item (4) of Article 5 of these Measures, the request for priority examination shall bear a recommendation opinion signed by the relevant competent department of the State Council or a provincial intellectual property administration. The applicant may submit materials related to prior art or prior design information that are conducive to expediting the examination process.

When filing a request for priority examination of a reexamination case or an invalidation case, the party shall submit a request for priority examination and materials related to the applicable circumstances specified in Article 5 or Article 6 of these Measures; the request for priority examination shall bear a recommendation opinion signed by the relevant competent department of the State Council or a provincial intellectual property administration.

When filing a request for priority examination of an invalidation case, a local intellectual property administration, a people's court or an arbitration institution shall submit a request for priority examination and state the reasons therefor.

Article 12 — Apart from the fees required to be paid under the Patent Law and the Implementing Rules of the Patent Law, CNIPA shall not charge any additional fees for patent applications or cases for which priority

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examination is requested.

Chapter IV — Examination and Review Procedures

Article 13 — A provincial intellectual property administration shall, in accordance with Articles 4 through 8 of these Measures, recommend patent applications or cases for which priority examination is requested, and shall state the reasons for the recommendation; where a requester for priority examination submits false materials or commits any other act in violation of the principle of good faith, no recommendation shall be granted.

Article 14 — After accepting a request for priority examination, CNIPA shall, in accordance with these Measures, examine the request for priority examination, the reasons for recommendation and the related materials; it shall permit the requester for priority examination to correct any formal defects in the request materials, form an opinion on whether to grant priority examination upon examination, and notify the requester for priority examination of the examination opinion.

Article 15 — For a patent application or case in respect of which CNIPA agrees to conduct priority examination, processing shall, except where difficult and complex circumstances exist, be completed within the following time limits calculated from the date of issuance of the notice granting priority examination:

(1) for an invention patent application, the first action shall be taken within forty-five days and the case closed within one year;

(2) for utility model and design patent applications, the case shall be closed within two months;

(3) for reexamination cases, the case shall be closed within seven months; and

(4) for invalidation cases of invention and utility model patents, the case shall be closed within five months, and for invalidation cases of design patents, the case shall be closed within four months.

Article 16 — For a patent application under priority examination, the applicant shall make a response or correction as soon as possible. The time limit for the applicant to respond to an office action for an invention patent application shall be one month from the date of issuance of the notification, and the time limit for the applicant to respond to a notification of correction or an office action for a utility model or design patent application shall be fifteen days from the date of issuance of the notification.

Article 17 — For a patent application under priority examination, CNIPA may terminate the priority examination procedure and handle the application under the ordinary procedure, and shall promptly notify the requester for priority examination, under any of the following circumstances:

(1) where, after CNIPA issues the notice granting priority examination, the applicant amends the application documents in accordance with paragraphs 1 and 2 of Article 57 of the Implementing Rules of the Patent Law;

(2) where the applicant's response exceeds the time limit specified in Article 16 of these Measures or the applicant requests an extension of the time limit for response; or

(3) where the applicant submits false materials or commits any other act in violation of the principle of good faith.

Article 18 — For a reexamination case or invalidation case under priority examination, CNIPA may terminate the priority examination procedure and handle the case under the ordinary procedure, and shall promptly notify the requester for priority examination, under any of the following circumstances:

(1) where the reexamination requester delays its response;

(2) where, after CNIPA issues the notice granting priority examination, the invalidation requester supplements evidence and grounds, or the patentee amends the claims in a manner other than by deletion;

(3) where the patent reexamination or invalidation procedure is suspended;

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(4) where the hearing of the case depends on the examination conclusions of other cases; or

(5) where a party submits false materials or commits any other act in violation of the principle of good faith.

Chapter V — Supervision and Administration

Article 19 — CNIPA shall allocate and adjust the number of patent priority examinations in each locality on the basis of factors such as the administration of patent priority examination work in each locality, the recommendation of priority examination requests and subsequent examination, the progress of intellectual property protection and exploitation work, and the support for key national industries and major strategies, and shall determine the total number of patent priority examinations in a coordinated manner based on overall demand and examination capacity.

Article 20 — A provincial intellectual property administration shall formulate work rules for the recommendation of priority examination, specify recommendation standards, and ensure that recommendation work is fair, impartial, open and transparent, so as to strengthen the administration of and provide targeted services to requesters for priority examination.

Article 21 — Staff engaged in the recommendation, examination, review and administration of priority examination shall strictly comply with the relevant provisions of laws and regulations and shall not commit acts such as dereliction of duty, abuse of power, or engaging in malpractice for personal gain.

Article 22 — Where a requester for priority examination or a patent agency commits an act in violation of the principle of good faith, CNIPA shall not accept any request for priority examination submitted by it within one year from the date on which the relevant act is determined.

Chapter VI — Supplementary Provisions

Article 23 — CNIPA shall be responsible for the interpretation of these Measures.

Article 24 — These Measures shall come into force on September 1, 2026. The Measures for the Administration of Patent Priority Examination promulgated by Order No. 76 of the National Intellectual Property Administration on June 27, 2017 shall be repealed simultaneously.

Disclaimer: This is an unofficial English translation of the Measures for the Administration of Patent Priority Examination of the People's Republic of China (CNIPA Order No. 85), provided for general informational purposes only. It has been prepared by Dan Young Business Consultancy for the convenience of foreign businesses and professionals and is not an official or legally binding translation. In the event of any discrepancy, the original Chinese text promulgated by the National Intellectual Property Administration shall prevail. This translation does not constitute legal advice, and readers should consult qualified counsel regarding specific matters.