Regulations on Patent Agency of China (the PRC)

Dan Young Business Consultancy — www.danyoungcpa.com

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

Contents

Table of Contents 1

Chapter I — General Provisions 1

Chapter II — Patent Agencies and Patent Agents 2

Chapter III — Patent Agency Practice 3

Chapter IV — Legal Liability 4

Chapter V — Supplementary Provisions 5

Promulgated by Order No. 76 of the State Council of the People’s Republic of China on March 4, 1991; revised and adopted at the 23rd Executive Meeting of the State Council on September 6, 2018; promulgated by Order No. 706 of the State Council on November 6, 2018; effective March 1, 2019.

Table of Contents

- Chapter I — General Provisions
- Chapter II — Patent Agencies and Patent Agents
- Chapter III — Patent Agency Practice
- Chapter IV — Legal Liability
- Chapter V — Supplementary Provisions

Chapter I — General Provisions

Article 1 — These Regulations are formulated in accordance with the Patent Law of the People’s Republic of China for the purposes of regulating patent agency conduct, protecting the lawful rights and interests of clients, patent agencies, and patent agents, maintaining the normal order of patent agency activities, and promoting the sound development of the patent agency industry.

Article 2 — For the purposes of these Regulations, “patent agency” means the act whereby a patent agency accepts an entrustment and handles patent matters such as patent applications and requests for invalidation of patent rights in the name of the client within the scope of the agency authority.

Article 3 — Any entity or individual may apply for patents and handle other patent matters in China on its or his or her own, or may entrust a patent agency established in accordance with law to handle them, except where laws provide otherwise.

A patent agency shall handle patent matters in accordance with the entrustment of the client.

Article 4 — Patent agencies and patent agents shall, in practice, observe laws and administrative regulations, scrupulously abide by professional ethics and practice discipline, and safeguard the lawful rights

Source: https://www.danyoungcpa.com/regulations-patent-agency-china-2018/

and interests of clients.

The lawful practice of patent agencies and patent agents shall be protected by law.

Article 5 — The patent administration department of the State Council shall be responsible for the administration of patent agency work nationwide.

The departments of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government that administer patent work shall be responsible for the administration of patent agency work within their respective administrative areas.

Article 6 — Patent agencies and patent agents may, in accordance with law, establish and join patent agency industry organizations.

Patent agency industry organizations shall formulate self-discipline rules for the patent agency industry. Self-discipline rules for the patent agency industry shall not conflict with laws and administrative regulations.

The patent administration department of the State Council shall supervise and guide patent agency industry organizations in accordance with law.

Chapter II — Patent Agencies and Patent Agents

Article 7 — Patent agencies shall take the organizational form of partnerships, limited liability companies, or other forms.

Article 8 — A patent agency in the form of a partnership or a limited liability company shall satisfy the following conditions to engage in patent agency business:

(1) it has a name conforming to laws and administrative regulations;

(2) it has a written partnership agreement or articles of association;

(3) it has independent business premises; and

(4) its partners and shareholders conform to the relevant State provisions.

Article 9 — To engage in patent agency business, an application shall be filed with the patent administration department of the State Council, together with the relevant materials, to obtain a patent agency practice license. The patent administration department of the State Council shall, within 20 days from the date of acceptance of the application, decide whether to issue the patent agency practice license.

Where matters such as the partners, shareholders, or legal representative of a patent agency change, the formalities for alteration shall be completed.

Article 10 — Chinese citizens with an associate degree or above in a science or engineering major of an institution of higher education may take the national patent agent qualification examination; those who pass the examination shall be issued a patent agent qualification certificate by the patent administration department of the State Council. The measures for the patent agent qualification examination shall be formulated by the patent administration department of the State Council.

Article 11 — A patent agent shall, in practice, obtain a patent agent qualification certificate, complete a one-year internship at a patent agency, and practice at a single patent agency.

Article 12 — A patent agent who practices for the first time shall, within 30 days from the date of commencing practice, file a record with the department of the people's government of the province, autonomous region, or municipality directly under the Central Government administering patent work at the place where the patent agency is located.

The departments of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government administering patent work shall provide convenience for patent agents to file

Source: https://www.danyoungcpa.com/regulations-patent-agency-china-2018/

records through the Internet.

Chapter III — Patent Agency Practice

Article 13 — A patent agency may accept entrustments to handle patent matters such as patent applications, requests for invalidation of patent rights, transfer of patent application rights or patent rights, and the conclusion of patent exploitation licensing contracts, and may also provide consultation on patent matters at the request of parties.

Article 14 — A patent agency accepting an entrustment shall conclude a written entrustment contract with the client. After accepting an entrustment, a patent agency shall not accept an entrustment from another party with a conflict of interest in respect of matters concerning the same patent application or patent right.

A patent agency shall assign patent agents practicing at the agency to handle patent agency business; the assigned patent agent and his or her close relatives shall not have a conflict of interest with the patent agency business undertaken by him or her.

Article 15 — Where a patent agency is dissolved, or its practice license is revoked or suspended, it shall properly handle all pending patent agency business.

Article 16 — A patent agent shall undertake patent agency business in accordance with the assignment of the patent agency and shall not accept entrustments on his or her own.

A patent agent shall not engage in patent agency business at two or more patent agencies concurrently.

A patent agent shall be responsible for the patent agency business handled under his or her signature.

Article 17 — Patent agencies and patent agents shall bear the obligation to keep confidential the contents of inventions-creations that they learn in the course of practice, except where a patent application has already been published or announced.

Article 18 — Patent agencies and patent agents shall not apply for patents or request invalidation of patent rights in their own names.

Article 19 — Staff of the patent administration department of the State Council and of the departments of local people’s governments administering patent work shall not engage in patent agency work within the period prescribed by laws and administrative regulations after leaving office.

A patent agent who previously held a position at the patent administration department of the State Council or at a department of a local people’s government administering patent work shall not act as an agent in patent applications or patent cases that he or she examined, heard, or handled.

Article 20 — Patent agencies shall, in charging fees, follow the principles of voluntariness, fairness, and good faith, and take into account both economic and social benefits.

The State shall encourage patent agencies and patent agents to provide patent agency assistance services for small and micro enterprises and for inventors and designers with no income or low income.

Article 21 — Patent agency industry organizations shall strengthen self-discipline management of their members, organize and carry out business training and professional ethics and practice discipline education for patent agents, and impose disciplinary measures on members who violate industry self-discipline rules.

Article 22 — The patent administration department of the State Council and the departments of the people’s governments of provinces, autonomous regions, and municipalities directly under the Central Government administering patent work shall, through random inspections and other means, inspect and supervise the practice activities of patent agencies and patent agents; where violations of these Regulations are discovered, they shall handle them in accordance with law in a timely manner, and announce the inspection and handling results to the public. No fees shall be collected for inspections.

Source: https://www.danyoungcpa.com/regulations-patent-agency-china-2018/

Article 23 — The patent administration department of the State Council and the departments of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government administering patent work shall strengthen the release of patent agency public information and provide inquiry services for the public to learn about the business operations of patent agencies and the practice of patent agents.

Chapter IV — Legal Liability

Article 24 — Where a party obtains a patent agency practice license or a patent agent qualification certificate by concealing the true facts or resorting to deception, the patent administration department of the State Council shall revoke the patent agency practice license or the patent agent qualification certificate.

Where a patent agency, after obtaining its practice license, no longer satisfies the conditions prescribed by these Regulations due to changed circumstances, the patent administration department of the State Council shall order it to rectify within a prescribed time limit; where it fails to rectify within the time limit or the rectification is unqualified, its practice license shall be revoked.

Article 25 — Where a patent agency commits any of the following acts, the department of the people's government of the province, autonomous region, or municipality directly under the Central Government administering patent work shall order it to rectify within a prescribed time limit, give it a warning, and may impose a fine of not more than 100,000 yuan; where the circumstances are serious or it fails to rectify within the time limit, the patent administration department of the State Council shall order it to cease undertaking new patent agency business for 6 to 12 months, up to revoking its patent agency practice license:

(1) failing to complete the formalities for alteration when matters such as partners, shareholders, or the legal representative change;

(2) accepting an entrustment from another party with a conflict of interest in respect of matters concerning the same patent application or patent right;

(3) assigning a patent agent to handle patent agency business with which the agent or his or her close relatives have a conflict of interest;

(4) disclosing the contents of a client's invention-creation, or applying for a patent or requesting invalidation of a patent right in its own name; or

(5) failing to manage properly, causing serious consequences.

Where a patent agency, in the course of practice, discloses the contents of a client's invention-creation involving the disclosure of State secrets or infringement of trade secrets, or bribes staff of the relevant administrative or judicial organs, or provides false evidence, it shall bear legal liability in accordance with the provisions of the relevant laws and administrative regulations; the patent administration department of the State Council shall revoke its patent agency practice license.

Article 26 — Where a patent agent commits any of the following acts, the department of the people's government of the province, autonomous region, or municipality directly under the Central Government administering patent work shall order him or her to rectify within a prescribed time limit, give him or her a warning, and may impose a fine of not more than 50,000 yuan; where the circumstances are serious or he or she fails to rectify within the time limit, the patent administration department of the State Council shall order him or her to cease undertaking new patent agency business for 6 to 12 months, up to revoking his or her patent agent qualification certificate:

(1) failing to file a record in accordance with these Regulations;

(2) accepting entrustments to handle patent agency business on his or her own;

(3) engaging in patent agency business at two or more patent agencies concurrently;

Source: https://www.danyoungcpa.com/regulations-patent-agency-china-2018/

(4) acting as an agent in patent applications or patent cases that he or she examined, heard, or handled, in violation of these Regulations; or

(5) disclosing the contents of a client's invention-creation, or applying for a patent or requesting invalidation of a patent right in his or her own name.

Where a patent agent, in the course of practice, discloses the contents of a client's invention-creation involving the disclosure of State secrets or infringement of trade secrets, or bribes staff of the relevant administrative or judicial organs, or provides false evidence, he or she shall bear legal liability in accordance with the provisions of the relevant laws and administrative regulations; the patent administration department of the State Council shall revoke his or her patent agent qualification certificate.

Article 27 — Where a party carries out patent agency business without authorization in violation of these Regulations, the department of the people's government of the province, autonomous region, or municipality directly under the Central Government administering patent work shall order it to cease the illegal acts, confiscate its illegal gains, and impose a fine of not less than one time but not more than five times the illegal gains.

Article 28 — Where a staff member of the patent administration department of the State Council or of a department of a people's government of a province, autonomous region, or municipality directly under the Central Government administering patent work violates these Regulations by abusing his or her power, neglecting his or her duties, or engaging in malpractice for personal gain, he or she shall be subject to sanctions in accordance with law; where a crime is constituted, criminal liability shall be pursued in accordance with law.

Chapter V — Supplementary Provisions

Article 29 — A foreign patent agency establishing a resident representative office within the territory of the People's Republic of China shall be subject to the approval of the patent administration department of the State Council.

Article 30 — Law firms may carry out patent-related business in accordance with the Lawyers Law of the People's Republic of China, the Civil Procedure Law of the People's Republic of China, and other laws and administrative regulations; however, engaging in the business of acting as agents in patent applications and requests for invalidation of patent rights shall comply with these Regulations, and the specific measures shall be separately formulated by the patent administration department of the State Council in consultation with the judicial administration department of the State Council.

Article 31 — The administrative measures for patent agencies and patent agents acting as agents in national defense patent matters shall be separately formulated by the patent administration department of the State Council in consultation with the competent authority for national defense patent institutions.

Article 32 — These Regulations shall be effective from March 1, 2019.

Patent agencies established in accordance with law and patent agents practicing in accordance with law before the implementation of these Regulations may, after the implementation of these Regulations, continue to carry out patent agency business in the names of patent agencies and patent agents.

Disclaimer: This translation is provided for reference and informational purposes only. In the event of any discrepancy, the official Chinese text issued by the State Council of the People's Republic of China shall prevail. This translation does not constitute legal advice.

Free PDF download of the complete article.