

## **Patent Attorney Act**

- 1. Promulgated on July 11, 2007; effective as of January 11, 2008.**
- 2. Amendment to Articles 4, 37, and 40 promulgated by Presidential Order on May 27, 2009, effective November 23, 2009.**
- 3. Amendment promulgated on July 1 2015; effective on January 1, 2016.**
- 4. Amendment to Articles 4, 37, and 40 promulgated by Presidential Order on November 21, 2018; entered into force on the date of promulgation.**

### Chapter One: General Principles

#### Article 1

This Act is enacted for protecting the rights and interests of patent applicants, strengthening the management of patent professional services, and establishing the patent attorney system.

#### Article 2

The government authority under this Act is the Ministry of Economic Affairs (MOEA). The administrative affairs of patent attorneys shall be handled by the Authority appointed by the MOEA.

#### Article 3

A citizen the Republic of China , who has successfully passed the Patent Attorney Eligibility Examination and obtained a Patent Attorney License in accordance with this Act, may practice as a patent attorney.

A non-citizen may take the Patent Attorney Eligibility Examination in accordance with the laws of the Republic of China; a non-citizen who successfully passes the Patent Attorney Eligibility Examination and obtains a Patent Attorney License in accordance with this Act may practice as a patent attorney.

#### Article 4

Any person who, for having any of the following circumstances, shall not practice as a patent attorney; where he/she is in practice, his/her Patent Attorney License shall be revoked or abolished :

1. Having been convicted of a crime as a result of engaging in professional services and sentenced to a term of imprisonment of one year or more by a domestic court or a foreign court. Exceptions to this provision are where one has been released on "probation," or one's conviction(s) involved a "non-intentional" crime.

2. Having been expelled for a cause prescribed in this Act.
3. Having been revoked of the examination qualification according to the provisions of Professionals and Technologists Examination Act.
4. Having been declared a guardianship or assistantship which is still in effect.
5. Having been declared bankrupt, with resolution still pending.

On whose Patent Attorney License was revoked or abolished due to the provisions prescribed in subparagraphs 4 and 5 of the preceding paragraph is entitled to apply for a Patent Attorney License whenever the conditions concerned cease to exist.

#### Article 5

One who has successfully passed the Patent Attorney Eligibility Examination and completed a prevocational training, may file an application with the Competent Authority together with the certification fee and the following documents for the issuance of a Patent Attorney License:

1. An application form;
2. Certificate of passing the Patent Attorney Eligibility Examination or documents evidencing such qualification;
3. Document(s) evidencing one's identification; and
4. Certificate of completing a prevocational training.

A patent attorney, who applies for replacing or re-issuing a patent attorney license due to loss, destruction, or damage of the license, shall file an application with the Competent Authority together with the certification fee and the documents prescribed in subparagraphs 1 and 3 of the preceding paragraph.

The training duration, implementation, withdrawal, termination, re-training and other relevant matters of the prevocational training prescribed in paragraph 1 shall be established by the Competent Authority.

### Chapter Two: Practice And Responsibility

#### Article 6

A patent attorney shall begin practice only after joining the Patent Attorneys Association.

#### Article 7

A patent attorney shall practice in one of the following ways:

1. Set up a patent firm.
2. Employed by a firm engaging in patent professional services.
3. Employed by a judicial association or a judicial person established or registered

according to the law.

A patent attorney employed by a juridical person prescribed in subparagraph 3 of the preceding paragraph shall serve as a full-time attorney and shall not engage in any practices prescribed in the subparagraphs of Article 9 for other juridical persons other than the employer.

#### Article 8

The Specific Patent Agency shall establish a database of patent attorneys containing the following particulars:

1. Name, gender, date of birth, address and identification card number;
2. Summary of educational background and professional experience(s);
3. Business practice location and address ;
4. Serial number of the Patent Attorney License;
5. Date of enrollment to the Patent Attorneys Association;
6. Category, date, and reasons of disciplinary actions or punishment received.

The Patent Attorneys Association shall provide the data of patent attorneys prescribed in the preceding paragraph to the Specific Patent Agency for establishing a database of patent attorneys.

The patent attorney concerned shall report to the Specific Patent Agency within 30 days from the date of occurrence of any changes to the particulars prescribed in subparagraphs 1 and 3 of paragraph 1 for record.

The Specific Patent Agency may disclose the data of the particulars prescribed in paragraph 1 apart from the data concerning the date of birth, address, and identification card number specified in subparagraph 1 in an appropriate manner for public interests..

#### Article 9

The scope of the commissioned practices of a patent attorney is as follows:

1. Matters involving patent filing;
2. Matters involving patent invalidation;
3. Matters involving register of assignment, trust, pledge, licensing and compulsory licensing of patent right;
4. Matters involving administrative appeals or litigations of patents;
5. Matters involving patent infringement assessment;
6. Matters involving patent consultation; and
7. Other patent operations prescribed in accordance with the Patent Act and other relevant laws and regulations.

#### Article 10

A patent attorney is prohibited from accepting representation in the following situations:

1. Instances where he/she or another patent attorney in his/her firm has previously accepted representation of the same matter from a respondent party to his/her or their client;
2. Instances where a matter had been previously handled while employed at an administrative institution or the court; and
3. Instances where a related matter had been previously assigned by an administrative institution or the court.

#### Article 11

A patent attorney, after accepting representation, shall loyally engage in services as designated; a patent attorney shall be liable for damages and compensation to a client for losses incurred due to lack of due diligence or negligence.

#### Article 12

Patent attorney shall not engage in the following conducts:

1. Deceiving or beguiling acts toward the Specific Patent Agency or his/her client;
2. Soliciting business engagement by improper means;
3. Disclosing or appropriating the content of cases of his/her client;
4. Posting or publishing notices amounting to fraud or threat in his/her name or the name of another; and
5. Allowing others to practice as a patent attorney under his/her name.

#### Article 12-1

A patent attorney shall continuously participate in on-the-job training and provides documents proving that such on-the-job training is completed to the Specific Patent Agency every 2 years.

Regulations governing the training implementation methods, required minimum hours, fees, procedures for handling rules infractions, and other related matters prescribed in the preceding paragraph shall be stipulated by the Competent Authority after consulting the Patent Attorneys Association.

#### Article 13

Anyone without a Patent Attorney License is not to use the title of patent attorney.

#### Article 14

A non-citizen who obtains a Patent Attorney License in accordance with this Act is subject to approval by the Component Authority before engaging in patent attorney professional services in the Republic of China, and shall abide by all laws and regulations of the Republic of China as well as the statute of incorporation of the Patent Attorneys Association.

#### Article 15

A non-citizen who practices as a patent attorney in the Republic of China shall present all statements to the Competent Authority in the official language of the Republic of China; the documents as presented shall mainly be in the official language of the Republic of China.

### Chapter Three: Professional Association

#### Article 16

When the number of patent attorneys registered with the Specific Patent Agency reaches 15, the patent attorneys so registered shall establish the Patent Attorneys Association.

The Patent Attorneys Association may not reject membership to qualified patent attorneys.

#### Article 17

The Patent Attorneys Association must be established within the administrative geographical jurisdiction of the Republic of China and where the central government is located.

Only one Patent Attorneys Association may be established.

#### Article 18

The Patent Attorneys Association shall elect directors and supervisors by the General Assembly and set up a Board of Directors and a Board of Supervisors.

There should not be more than 35 directory board members; the number of the supervisory board members shall not exceed one-third of the number of the directory board members; the numbers of substitute directory board members and supervisory board members shall not exceed one-third of the numbers of directory board member or supervisory board members.

#### Article 19

The directory board members and supervisory board members shall hold office for a term of three years, the number of re-elected board members shall not exceed one-half of the total board members; the President of the board of directors shall only be eligible for re-election once.

#### Article 20

The General Assembly of the Patent Attorneys Association shall convene once a year; a provisional general assembly may be convened when necessary. A provisional general assembly shall be convened upon passage of a motion by more than one-fifth of its members.

#### Article 21

The Patent Attorneys Association shall stipulate its statute of incorporation, which is to be submitted to and approved by the authority in charge of civil organizations, and forwarded to the Competent Authority for record. The same procedures apply when the statute of incorporation is amended.

#### Article 22

The statute of incorporation of the Patent Attorneys Association shall contain the following matters:

1. Name and place of Association;
2. Objectives, organization and duties;
3. Rules for enrollment and withdrawal of membership;
4. Rights and obligations of the members;
5. Numbers of directory board members, supervisory board members, substitute directory and supervisory board members, their respective terms of service, authorities and duties, and their election and removal thereof;
6. Rules of order for the General Assembly, and for the meetings of Boards of Directors and Supervisors;
7. Professional ethics abided by all members;
8. Organization of a Patent Attorney's Professional Conduct Committee and means for maintaining discipline;
9. Membership fees, budget and accounting;
10. Procedures for amending the statute of incorporation; and
11. Other matters required by other laws and regulations or necessary for the functioning of the Association.

#### Article 23

The Patent Attorneys Association shall report the following to the authority in charge of civil organizations and the Competent Authority:

1. Enrollment of membership, including admission of new members and withdrawal of members;
2. Results of directory and supervisory board elections, including names of elected members; and
3. Motions and resolutions reached at the General Assembly, and meetings of Boards of Directors and Supervisors.

#### Article 24

Where the resolutions or acts by the Patent Attorneys Association are in violation of the laws and regulations or its statute of incorporation, the authority in charge of civil organizations may impose any of the following sanctions:

1. A warning;
2. Forcible recantation of the resolution at issue;
3. Revocation of the seats of directors or supervisors; and
4. An order to re-arrange within a prescribed time.

The Competent Authority may also impose the sanctions prescribed in subparagraphs 1 and 2 of the preceding Paragraph.

#### Chapter Four: Disciplinary Actions

#### Article 25

A patent attorney with any of the following situations shall be subject to disciplinary action(s):

1. Violation of Articles 7,10 or 12;
2. Conviction of a crime in connection with business practices; and
3. Serious violation of the statute of incorporation of the Patent Attorneys Association.

The enforcement of disciplines pursuant to the provisions of the preceding paragraph expires following the lapse of three years.

The period specified in the preceding paragraph shall commence from the day the situation prescribed in paragraph 1 is complete, except where the consequence of such an act occurs at a later day, in which case the period shall commence from the day on which the consequence occurs.

Where a disciplinary action is annulled upon a decision out of an administrative appeal, administrative litigation or other remedial proceedings, thus making it

necessary to render an alternative decision, the period specified in paragraph 2 above shall commence from the date on which the annulment of the original disciplinary action is withdrawn.

The period of limitation of disciplinary enforcement is interrupted if it cannot commence or if the disciplinary action cannot be executed because of natural calamity or accident or by operation of law.

Where the period of limitation of disciplinary enforcement is interrupted in pursuance of the preceding paragraph, the time that begins following the day on which the cause for such interruption ceases shall be added to the period which had elapsed prior to such interruption.

#### Article 26

Shall a disciplinary action be imposed on a patent attorney, the clients, parties of interest, Specific Patent Agency or Patent Attorneys Association may report all related facts and present supporting evidence of such violation to the Patent Attorney Disciplinary Committee.

#### Article 27

Disciplinary action imposed on a patent attorney may be any one of the following:

1. A warning;
2. A reprimand;
3. Suspension of the right to practice for a period not less than two months but no more than two years; and
4. Expulsion.

Disciplinary action in the form of a warning accumulated to three times shall be regarded as one reprimand; disciplinary action in the form of a reprimand accumulated to three times shall further be subject to the disciplinary action in suspension of the right to practice; disciplinary action in the form of suspension of the right to practice accumulated to three years shall be subject to expulsion.

#### Article 28

The Patent Attorney Disciplinary Committee shall, in the proceeding of a disciplinary action, notify the patent attorney whom such action is to be imposed, and direct him/her to present a response or to personally state his/her case before the Committee within twenty days; in case of failure to present a response or personally state his case before the Committee within the prescribed period, the Committee may therewith adopt a resolution based on the materials presently available.



#### Article 29

The Patent Attorney Disciplinary Committee shall accordingly transfer the matter to the judicial institution for investigation if it suspects, in the proceeding of the disciplinary action, that a criminal offense is involved.

#### Article 30

The Patent Attorney Disciplinary Committee shall publish its resolution in the Patent Gazettes and inform the Patent Attorneys Association when a disciplinary sanction imposed on a patent attorney has become final.

#### Article 31

The Competent Authority shall establish the Patent Attorney Disciplinary Committee to handle matters in connection with disciplinary actions imposed on patent attorneys. The organization, the rules of procedure and other rules to be observed are to be prescribed by the Competent Authority.

#### Article 32

Any person without a Patent Attorney License or with the Patent Attorney License revoked or repealed accepts representation or hires a patent attorney to engage in the practices prescribed in subparagraphs 1 to 4 of Article 9 for the purpose of making a profit, unless where such practices are in accordance with the laws shall be sentenced to imprisonment for no more than 3 years or short-term imprisonment; in lieu thereof, or in addition thereto, a fine of no less than four hundred thousand yuan but no more than two million yuan may be imposed.

Any person without a Patent Attorney License or with the Patent Attorney License revoked or repealed posts an advertisement or solicits businesses to engage in the practices prescribed in subparagraphs 1 to 4 of Article 9, and fails to cooperate after being ordered to cease the conduct within a specified time period or repeats the conduct after the period shall be imposed a fine of no less than one hundred thousand yuan but no more than five hundred yuan and ordered to cease the conduct again within another specified time period by the Specific Patent Agency. If such person fails to cooperate after being ordered to cease the conduct or repeats the conduct after the lapse of the period again, he/she shall be sentenced to imprisonment for no more than 1 year or short-term imprisonment; in lieu thereof, or in addition thereto, a fine of no less than one hundred thousand yuan but no more than five hundred yuan may be imposed.

#### Article 32-1

A patent attorney who provides his/her Patent Attorney License and seal or the logo of his/her patent firm to any person without a Patent Attorney License to engage in the practices prescribed in Article 9 shall be sentenced to imprisonment for no more than 2 years or short-term imprisonment; in lieu thereof, or in addition thereto, a fine of no less than two hundred thousand yuan but no more than one million yuan may be imposed.

#### Article 33

A patent attorney who accepts representation to engage in the practices prescribed in subparagraphs 1 to 4 of Article 9, without joining the Patent Attorneys Association or being suspended to practice, is subject to a fine of no less than sixty thousand yuan but no more than three hundred thousand yuan, and an order to correct or stop his/her acts within a prescribed period; one who fails to correct or stop his/her acts within the prescribed period is subject to repeated orders to correct or stop his/her acts and sanctions for each time until his/her acts are corrected or stopped. Any person who violates Article 13 by using the title as a patent attorney without Patent Attorney License shall be imposed a fine of no less than thirty thousand yuan but no more than one hundred fifty thousand yuan and ordered to cease the conduct within a specified time period. by the Specific Patent Agency. One who fails to correct or stop his/her acts within the prescribed period is subject to repeated orders to correct or stop his/her acts and sanctions for each time until his/her acts are corrected or stopped.

The preceding paragraph shall apply as well to where any person uses the title as a patent attorney after his/her Patent Attorney License is revoked or repealed.

#### Article 33-1

A patent attorney who does not proceed the on-the-job training in accordance with Paragraph 1 of Article 12-1 shall be notified to correct that within 6 months by the Specific Patent Agency. One who fails to complete the correction after the lapse of the time period shall be imposed a fine of no less than sixty thousand yuan but no more than three hundred thousand yuan by the Specific Patent Agency.

#### Article 34

Where the Patent Attorneys Association is in violation of Paragraph 2, Article 16, said Association is subject to a fine not less than NT\$10,000 but no more than NT\$50,000 by the authority in charge of civil organizations.

## Chapter Five: Supplementary Provisions

### Article 35

(deleted)

### Article 36

Any person who obtained a patent agent license prior to the effective date of this Act may continue engaging in the practices prescribed in Article 9 after the effective date of this Act.

Paragraph 2 of Article 5, Articles 7, 8 and 11 shall apply mutatis mutandis to patent agents.

### Article 37

Persons who, under any of the following situations, shall not practice as a patent agent; where he/she has been practicing as a patent agent, his/her Patent Agent License shall be revoked:

1. Having been convicted of a crime as a result of engaging in professional services and sentenced to a term of imprisonment of one year or more. Exceptions to this provision are where one has been released on "probation," or one's conviction(s) involved a "non-intentional" crime.
2. Having been declared a guardianship or assistantship which is still in effect.
3. Having been declared bankrupt, with resolution still pending.
4. Having been revoked or abolished of the qualification for obtaining the Patent Agent License according to the laws.

### Article 37-1

Any person without a Patent Agent License or with the Patent Agent License revoked or repealed but accepts representation or hires a patent attorney to engage in the practices prescribed in subparagraphs 1 to 4 of Article 9 for the purpose of making a profit, unless where such practices are in accordance with the laws shall be sentenced to imprisonment for no more than 3 years or short-term imprisonment; in lieu thereof, or in addition thereto, a fine of no less than four hundred thousand yuan but no more than two million yuan may be imposed.

Any person without a Patent Agent License or with the Patent Agent License revoked or repealed posts an advertisement or solicits businesses to engage in the practices prescribed in subparagraphs 1 to 4 of Article 9 and fails to cooperate after being ordered to cease the conduct within a specified time period or repeats the conduct after the period shall be imposed a fine of no less than one hundred thousand yuan

but no more than five hundred thousand yuan and ordered to cease the conduct within a specified time period by the Specific Patent Agency. If such person fails to cooperate after being ordered to cease the conduct or repeats the conduct after the lapse of the period again, he/Such person, if after the lapse of the specified time period having not ceased the conduct or misbehaving again after cease, he/she shall be sentenced to imprisonment for no more than 1 year or short-term imprisonment; in lieu thereof, or in addition thereto, a fine of no less than one hundred thousand yuan but no more than five hundred thousand yuan may be imposed.

#### Article 37-2

A patent agent who provides his/her Patent Agent License and seal or the logo of his/her patent firm to any person without a Patent Agent License to engage in the practices prescribed in Article 9 shall be sentenced to imprisonment for no more than 2 years or short-term imprisonment; in lieu thereof, or in addition thereto, a fine of no less than two hundred thousand yuan but no more than one billion yuan may be imposed.

#### Article 37-3

A patent agent who is suspended from practicing but accepts representation to engage in the practices prescribed in subparagraphs 1 to 4 of Article 9 shall be imposed a fine of no less than sixty thousand yuan but no more than three hundred thousand yuan and ordered to correct or cease the conduct within a specified time period by the Specific Patent Agency. One who fails to correct or stop his/her acts within the prescribed period is subject to repeated orders to correct or stop his/her acts and sanctions for each time until his/her acts are corrected or stopped.

Any person using the title as a patent agent without a Patent Agent License shall be imposed a fine of no less than thirty thousand yuan but no more than one hundred fifty thousand yuan and ordered to cease the conduct within a specified time period by the Specific Patent Agency. One who fails to correct or stop his/her acts within the prescribed period is subject to repeated orders to correct or stop his/her acts and sanctions for each time until his/her acts are corrected or stopped.

The preceding paragraph shall apply as well to where any person uses the title as a patent agent after his /her Patent Agent License is revoked or repealed.

#### Article 37-4

A patent agent shall continuously participate in the on-the-job training and provides documents proving that such on-the-job training is completed to the Specific Patent

Agency every 2 years.

The on-the-job training prescribed in the preceding paragraph shall be governed by the relevant items regulated by the competent authority as prescribed under Paragraph 2 of Article 12-1.

A patent agent who does not proceed the on-the-job training in accordance with Paragraph 1 shall be notified to correct that within 6 months by the patent authority. One who fails to complete the correction after the lapse of time shall be imposed a fine of no less than sixty thousand yuan but no more than three hundred thousand yuan by the Specific Patent Agency.

#### Article 38

A patent agent is prohibited from engaging in professional service as follows:

1. Instances where he/she or another patent attorney or patent agent in his/her firm has previously accepted representation of the same matter from a respondent party to his/her or their client;
2. Instances where a matter had been previously handled while employed at an administrative institution or the court; and
3. Instances where a related matter had been previously assigned by an administrative institution or the court.

Patent agent shall not engage in the following conducts:

1. Deceiving or beguiling acts toward the Competent Authority or his/her client;
2. Soliciting business engagement by improper means;
3. Disclosing or appropriating the content of cases of his/her client;
4. Posting or publishing notices amounting to fraud or threat in his/her name or the name of another; and
5. Allowing others to practice as a patent agent under his/her name.

#### Article 39

A patent agent who violates the preceding article, Article 7 applicable mutatis mutandis under Paragraph 2 of Article 36, or being convicted by a final and irrevocable judgement or ruling for a crime relevant to his/her profession shall be subject to disciplinary actions in the form of a warning, a reprimand, suspension from practicing for a period not less than 2 months but no more than 2 years, or revocation of the Patent Agent License, depending on the severity of the misbehaving conduct, by the Specific Patent Agency.

A patent agent who has received 3 warnings accumulatively shall be deemed as receiving one reprimand; a patent agent who has received 3 reprimands accumulatively shall be subject to the disciplinary action of suspension from

practicing. Where the accumulative time period of suspension from practicing of a patent agent reaches to 3 years, his/her Patent Agent License shall be repealed.

#### Article 40

This Act shall become effective 6 months from the date of promulgation.

The amendments made to this Act, except the provisions amended on May 27, 2009 and effective since November 23, 2009 and the provisions amended on July 1, 2015 and effective 6 months from the date of promulgation, shall come into force on the date of promulgation.