

109年專門職業及技術人員高等考試會計師、
不動產估價師、專利師、民間之公證人考試試題

代號：70150
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70650
頁次：6-1

等 別：高等考試

類 科：專利師(選試專業英文及工程力學)、專利師(選試專業英文及生物技術)、
專利師(選試專業英文及電子學)、專利師(選試專業英文及物理化學)、
專利師(選試專業英文及工業設計)、專利師(選試專業英文及計算機結構)

科 目：專業英文

考試時間：2小時

座號：_____

※注意：禁止使用電子計算器。

甲、申論題部分：(50分)

(一)請以英文作答，不必抄題，作答時請將試題題號及答案依照順序寫在申論試卷上，於本試題上作答者，不予計分。

(二)請以藍、黑色鋼筆或原子筆在申論試卷上作答。

一、The system of international priority right under patent law originates from Paris Convention for the Protection of Industrial Property (the Paris Convention). Since Taiwan joined the World Trade Organization (the WTO), Taiwan Patent Act has directly found the support from the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) to implement such the system. Please elaborate the system of international priority right according to Article 28 of Taiwan Patent Act, in terms of definition, legislative purpose, and examination of patentability. (30分)

二、Please translate the following opinion of the Supreme Administrative Court in English:

關於系爭專利說明書是否符合明確且充分揭露而可據以實現要件之審查，係指說明書應明確且充分記載申請專利之發明，記載之用語亦應明確，使該發明所屬技術領域中具有通常知識者，在說明書、申請專利範圍及圖式三者整體之基礎上，參酌申請時之通常知識，無須過度實驗，即能瞭解其內容，據以製造及使用申請專利之發明，解決問題，並且產生預期的功效。(20分)

乙、測驗題部分：（50分）

代號：5701

- (一)本測驗試題為單一選擇題，請選出一個正確或最適當的答案，複選作答者，該題不予計分。
(二)共25題，每題2分，須用2B鉛筆在試卡上依題號清楚劃記，於本試題或申論試卷上作答者，不予計分。

- 1 According to the R.O.C. Patent Act, which of the following is the competent authority referred to in the Patent Act?
(A) The Ministry of Economic Affairs (MOEA) (B) The Intellectual Property Office, MOEA
(C) The Executive Yuan (D) The Intellectual Property Court
- 2 According to the R.O.C. Patent Act, an invention patent right shall become extinguished under certain circumstance(s). Which of the following is not included?
(A) Where the patent term has expired.
(B) Where the patentee has passed away without heirs.
(C) Where the patentee abandoned the patent, and the patentee makes a declaration in writing.
(D) Where the recorded patentee is a dissolved company.
- 3 According to the R.O.C. Patent Act, Customs shall repeal the detention of the imported articles that are suspected of infringing the patent right(s) in case of certain situation(s). Which of the following is not included?
(A) Customs has not been notified by the detention requester, within twelve (12) days following the date of Customs' acceptance of the request, that a litigation claiming that the detained articles infringe the patent right(s) has been initiated in accordance with Article 96 of the Patent Act.
(B) A litigation initiated by the detention requester claiming that the detained articles infringe the patent right(s) has been dismissed by a final and binding court judgment.
(C) A court of law in a final and binding judgment has held that the detained articles do not infringe trademark right(s).
(D) The detention requester has requested the repeal of detention.
- 4 According to the R.O.C. Patent Act, the Specific Patent Agency may, upon request, repeal a granted compulsory license under certain circumstance(s). Which of the following is not included?
(A) Where the fact warranting the compulsory license has been changed and compulsory licensing is no longer necessary.
(B) Where the licensee fails to properly exploit the patent as required in the compulsory license.
(C) Where the licensee fails to pay the remuneration as determined by the Specific Patent Agency.
(D) Where the patentee claims patent infringement against the licensee.
- 5 According to the R.O.C. Patent Act, which of the following statements regarding the right to apply for patent is not correct?
(A) The right to apply for a patent shall mean the right to file a patent application in accordance with the Patent Act.
(B) The right to apply for a patent shall not be taken as the subject of a pledge.
(C) The right to apply for a patent is not assignable and inheritable.
(D) Where an invention, a utility model or a design is made by an employee in the course of performing his/her duties, the right to apply for a patent thereof shall be vested in his/her employer and the employer shall pay the employee reasonable remuneration; where there is an agreement providing otherwise, such agreement shall prevail.

- 6 According to the R.O.C. Patent Act, which of the following statements regarding the utility model patent is not correct?
- (A) A utility model patent means the creation made in respect of the shape, pattern, color, or any combination thereof, of an article as a whole or in part by visual appeal.
 - (B) A utility model patent shall not be granted if it is contrary to public order or morality.
 - (C) The term of a utility model patent shall expire after a period of ten (10) years starting from the filing date.
 - (D) When exercising a utility model patent, the patentee shall not make a warning without presenting the technical evaluation report of utility model patent.
- 7 According to the R.O.C. Patent Act, which of the following statements regarding patent infringement is not correct?
- (A) A patentee of an invention patent may demand a person who infringes or is likely to infringe the patent right to stop or prevent such infringement.
 - (B) A non-exclusive licensee may, within the licensed scope, make demands against patent infringement in accordance with the Patent Act.
 - (C) Where the infringement is found to be intentionally committed, the court may, upon request and on the basis of the severity of the infringement, award the damages greater than the loss suffered but not exceeding three (3) times of the proven loss.
 - (D) A patentee may request Customs to detain the imported articles that are suspected of infringing the patent right(s).
- 8 According to the R.O.C. Patent Act, which of the following may be granted a patent?
- (A) Diagnostic, therapeutic and surgical methods for the treatment of humans or animals
 - (B) Animals, plants, and essential biological processes for the production of animals or plants
 - (C) Fine arts
 - (D) Processes for producing microorganisms
- 9 According to the R.O.C. Patent Act, where a fund provider appoints another party to conduct research and development, the ownership of the right to apply for a patent and the patent right in connection with the outcome of such research and development shall be vested in the party as mutually agreed upon in an agreement between both parties. Without any mutual agreement, such rights will not be vested in the following?
- (A) Inventor
 - (B) Utility model creator
 - (C) Fund provider
 - (D) Designer
- 10 According to the Enforcement Rules of the R.O.C. Patent Act, where the Chinese translation of technical terminology has been made by which of the following, such official translation shall prevail?
- (A) The Intellectual Property Office, MOEA
 - (B) The Ministry of Education
 - (C) National Taiwan Normal University
 - (D) The National Academy for Educational Research

- 11 According to the R.O.C. Patent Act, an applicant may designate an agent to file patent applications and handle patent-related matters on his/her behalf. Which of the following is not qualified as an agent?
(A) Patent attorneys (B) Patent agents (C) Patent examiners (D) Lawyers
- 12 According to the R.O.C. Patent Act, which of the following statements regarding the patent term of a patent is not correct?
(A) The term of a design patent shall expire after a period of fifteen (15) years from the filing date of the application.
(B) A derivative design patent shall not expire simultaneously with the original design patent.
(C) The term of a utility model patent shall expire after a period of ten (10) years starting from the filing date.
(D) The term of an invention patent shall expire after a period of twenty (20) years from the filing date of the application.
- 13 According to the R.O.C. Patent Act, an invention which is industrially applicable may be granted a patent upon application in accordance with the Patent Act. Which of the following is not an exception to patentability?
(A) The invention was disclosed in a printed publication prior to the filing of the patent application.
(B) The invention was publicly exploited prior to the filing of the patent application.
(C) The invention was publicly known prior to the filing of the patent application.
(D) The invention cannot be easily made by a person ordinarily skilled in the art based on prior art.
- 14 According to the R.O.C. Patent Act, which of the following statements regarding the design patent is not correct?
(A) Where two or more design patent applications are filed for the same or similar design(s), only the earlier-filed application can be granted.
(B) Where the filing date and the priority date of two or more design patent applications are the same, the applicants shall be notified to reach an agreement with respect to the matter concerned. If such an agreement cannot be reached, none of the applications shall be granted.
(C) For computer generated icons (Icons) and graphic user interface (GUI) applied to an article, an application cannot be filed pursuant to the Patent Act for obtaining a design patent.
(D) The term of a design patent shall expire after a period of fifteen (15) years from the filing date of the application.
- 15 According to the R.O.C. Patent Act, which of the following statements regarding the invention patent is not correct?
(A) Invention means the creation of technical ideas, utilizing the laws of nature.
(B) Where an applicant has first applied for a patent in a foreign country, which reciprocally allows the R.O.C. nationals to claim patent priority, or with any member of the World Trade Organization (WTO), the applicant may claim priority in respect of an R.O.C. patent application for the same invention if the R.O.C. patent application for the same invention is filed within twelve (12) months after the filing date of the said first patent application.
(C) After receiving application documents and determining through examination that the application conforms to stipulated formality requirement and contains no elements that may be deemed unsuitable for laying open, the Specific Patent Agency shall lay open the patent application for invention eighteen (18) months since its filing.
(D) A request to the Specific Patent Agency for substantive examination of a patent application for invention may be made by any person within two (2) years after the filing date of the patent application. Where a request for substantive examination is not filed within the stipulated time period, the patent application for invention shall be deemed to have been withdrawn.

- 16 According to the Act of the Organization of Intellectual Property Office, Ministry of Economic Affairs, the Intellectual Property Office under the Ministry of Economic Affairs is not in charge of which of the following matters?
- (A) Matters in connection with research, drafting and execution of policies, laws, regulations, and systems governing patent right.
 - (B) Matters in connection with the patent examination, re-examination, opposition, cancellation, revocation and extinguishment as well as the management of patent rights.
 - (C) Publicity of the concept of intellectual property rights, mediation, assessment and assistance in raid action with regard to intellectual property rights infringement cases.
 - (D) Trial of civil litigations over patent infringement.
- 17 According to the R.O.C. Patent Act, the patentee filing a request for amending the description, claim(s) or drawing(s) of a granted invention patent shall not conduct which of the following?
- (A) To clarify ambiguous statement(s)
 - (B) To increase claim(s)
 - (C) To narrow down the scope of claim(s)
 - (D) To correct errors or translation errors
- 18 In accordance with the Guidelines for Substantive Examination of Invention Patent, which of the following written or electronic form of material is not a “printed publication” under the Patent Act Art. 22?
- (A) An oral presentation at the meeting, where the audiences are invited persons and the presentation material was distributed to attendees in written form with restriction to sign a nondisclosure agreement.
 - (B) A doctoral thesis that was cataloged and shelved in only one university library, where there is no evidence that anyone ever actually looked at the manual.
 - (C) A reference available only in electronic form on the internet, which states that it was publicly posted on June 16, 2020.
 - (D) A technical manual that was shelved and cataloged in a public library.
- 19 Choose the best answer with respect to the doctrine of exhaustion under the Patent Act:
- (A) Only initial authorized sale of a patented item within Taiwan “exhausts” all rights of the patentee to that item under the Patent Act.
 - (B) The patent holder is barred from enforcing the patent rights by operation of the doctrine of exhaustion.
 - (C) The doctrine of patent exhaustion as applied in Taiwan includes only domestic exhaustion.
 - (D) The first sale doctrine is different from the doctrine of exhaustion.
- 20 Choose the best description with respect to an inventor:
- (A) An inventor can be a nature person, a company or a legal entity of another type.
 - (B) A researcher only executing results testing can be deemed to be an inventor, because the testing requires some special skill and experience.
 - (C) All joint inventors have to make an equal contribution to an invention.
 - (D) An inventor is a person who has made substantial contribution to the technical features of patent claims.

- 21 In accordance with the Patent Act, the patent approval decision was made on Dec. 2, 2015 and served on applicant on Dec. 20, 2015. What is the deadline for the payment of patent certificate fee and the first-year patent annuity?
- (A) Mar. 2, 2016 (B) Mar. 20, 2016 (C) Sep. 2, 2016 (D) Sep. 20, 2016
- 22 In accordance with Article 37 of Intellectual Property Case Adjudication Rules, which is not a major factor to be considered if the court decides to grant a preliminary injunction?
- (A) Whether there is a likelihood of success on the merits of the case.
(B) Whether there will be irreparable harm to the petitioner.
(C) The impact on public interest.
(D) Whether the plaintiff posts a bond to cover the defendant's damage.
- 23 In accordance with Articles 62 and 63 of the Patent Act, which is the correct statement with respect to exclusive and non-exclusive license?
- (A) The exclusive licensee cannot exclude the patentee from exploiting the patented invention within the scope of the license.
(B) An exclusive licensee can sue infringers in its own name within the scope of the license.
(C) Registration of the license with the Taiwan Intellectual Property Office is a requirement for exclusive licensee to bring an infringing suit.
(D) A nonexclusive license grants a right to licensee to sublicense third parties.
- 24 The right would be conferred on a patentee of a new pharmaceutical product patent as in the following situations:
- (A) An exclusive right to prevent others from exploiting the invention.
(B) An exclusive right to exploit the invention by himself or herself.
(C) The right to market new pharmaceutical product.
(D) The right to sell a product to a third party.
- 25 If a patent attorney deceives her client when she handles a patent case, which of the following disciplinary actions is not permitted upon her.
- (A) An expulsion.
(B) A reprimand.
(C) Suspension of the right to practice for a period of three years.
(D) Suspension of the right to practice for a period of one year.