

111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
|
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 Paris Convention for the Protection of Industrial Property applies to industrial property in the widest sense, such as patents, utility models, and industrial designs. Under this Convention, there are certain provisions relating to the national treatment rule. Please elaborate, in about 250 words, on this rule which has guaranteed the right to national treatment in each of the countries to which the Convention applies. (30分)

二、Please translate the following provisions into English:

(一)利害關係人對於專利權之撤銷，有可回復之法律上利益者，得於專利權當然消滅後，提起舉發。(10分)

(二)發明專利權人對於因故意或過失侵害其專利權者，得請求損害賠償。(10分)

乙、測驗題部分：(50分)

代號：5701

(一)本試題為單一選擇題，請選出一個正確或最適當答案。

(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 Under what circumstance should the R.O.C. Specific Patent Agency accept the patent application filed by a foreign applicant?
 - (A) If the foreign applicant's home country is a contracting state to an international treaty for the protection of the patent right to which the R.O.C. is not a contracting state.
 - (B) If the foreign applicant's home country concludes with the R.O.C. an agreement for nonreciprocal protection of patent rights.
 - (C) If there is a patent protection agreement concluded by and between organizations or institutions of the R.O.C. and the foreign applicant's home country and approved by the respective competent authorities.
 - (D) If the laws of the foreign applicant's home country do not accept patent applications filed by R.O.C. nationals.

- 9 A patent application filed in the Taiwan Intellectual Property Office (TIPO) contains the following dependent claim:
“Claim 2. The method of Claim 1, further consisting of the step of cooling the mixture to a temperature of 32° F.”
Following proper TIPO practices and procedures, from which of the following claims does Claim 2 not properly depend?
- (A) Claim 1. A method of making liquid compound A consisting of the steps of mixing equal quantities of material C and material D in a beaker and heating the mixture to a temperature of 212° F.
 - (B) Claim 1. A method of making liquid compound A comprising the steps of mixing equal quantities of material C and material D in a beaker and heating the mixture to a temperature of 212° F.
 - (C) Claim 1. A method of making liquid compound A including the steps of mixing equal quantities of material C and material D in a beaker and heating the mixture to a temperature of 212° F.
 - (D) Claim 1. A method of making liquid compound A characterized by the steps of mixing equal quantities of material C and material D in a beaker and heating the mixture to a temperature of 212° F.
- 10 Peter and Amy, who are not related, are trapped on an uninhabited mountain. In order to signal for help, Peter invents a signaling device using bamboo shoots. Amy witnesses but does not assist in any way in the development of the invention. The signaling device works and Amy was rescued only due to the capacity of the helicopter. The bad weather conditions have prevented Peter’s rescue to date. Amy would like to file a patent application for the signaling device and ask for your advice. Which of the following, in accordance with the R.O.C. Patent Act and its enforcement rules, is true?
- (A) Since Peter invented the invention, Amy cannot properly file an application for a patent in her name even though Peter is unavailable.
 - (B) Amy should file an application in her name since she has witnessed the invention and knows how to make and use it. Subsequently, when Peter becomes available, the inventorship may be changed to the correct inventorship.
 - (C) Since Peter is not available and cannot be reached, Amy may properly sign the declaration on his behalf since she has witnessed the invention and knows how to make and use it.
 - (D) Even though Peter and Amy are not related, Amy may properly file an application on Peter’s behalf.
- 11 Which of the following is the process by which a court determines the scope and meaning of a patent’s claims and then determine whether a patent has been infringed?
- (A) Claim determination.
 - (B) Claim preclusion.
 - (C) Claim introduction.
 - (D) Claim construction.
- 12 In the U.S. Supreme Court case, *Graver Tank & Mfg. Co. v. Linde Air Prods., Inc.*, the court held that “a patentee may invoke this doctrine to proceed against the producer of a device ‘if it performs substantially the same function in substantially the same way to obtain the same result.’” Which of the following is “this doctrine” referring to?
- (A) All elements rule.
 - (B) The doctrine of equivalents.
 - (C) TSM test.
 - (D) The doctrine of exhaustion.

- 13 The Patent Cooperation Treaty (PCT) makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an “international” patent application. Which of the following is not the advantage of the procedure under the PCT for applicants, patent offices and the general public?
- (A) Applicants have up to 12 months if they had not used the PCT to reflect on the desirability of seeking protection in foreign countries, appoint local patent agents in each foreign country, prepare the necessary translations and pay national fees.
- (B) Applicants can rest assured that, if their international application is in the form prescribed by the PCT, it cannot be rejected on formal grounds by any designated office during the national phase.
- (C) The search and examination work of patent offices can be considerably reduced or eliminated thanks to the international search report, the written opinion and, where applicable, the international preliminary report on patentability which are communicated to designated offices together with the international application.
- (D) Since each international application is published with an international search report, third parties are in a better position to formulate a well-founded opinion about the potential patentability of the claimed invention.
- 14 Article 27 of the Agreement on Trade-Related Aspects of Intellectual Property Rights provided that “Members may also exclude from patentability:...(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof...” What does the phrase “sui generis” mean?
- (A) Common. (B) Suitable. (C) General. (D) Unique.
- 15 Under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), members cannot normally discriminate between their trading partners. Grant someone a special favor (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members. Which of the following is known as the aforementioned principle?
- (A) Reciprocity. (B) Binding and enforceable commitments.
- (C) National Treatment. (D) Most-Favored-Nation Treatment.
- 16 Which of the following statements regarding compulsory licenses under Article 87 of the R.O.C. Patent Act is correct?
- (A) Request for compulsory licensing of a patent made pursuant to circumstances where a patented invention is to be exploited non-commercially for the enhancement of public interest does not require the requestor to have made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions.
- (B) All compulsory licensing of a patent granted by the Specific Patent Agency requires the existence of national emergency or other circumstances of extreme urgency.
- (C) Utility model patent is not subject to the provision of compulsory licensing. Therefore, it is not legal to grant compulsory license of a utility model patent.
- (D) The ground for a request for compulsory licensing of a patent involving semiconductor technology includes circumstances where a patentee has committed acts restricting competition, for which a decision has been rendered by the Fair Trade Commission of the Executive Yuan.

- 17 According to the Agreement on Trade-Related Aspects of Intellectual Property Rights, which of the following statements is correct?
- (A) Patent protection should extend to expressions and not to ideas, procedures, or methods of operation as such.
 - (B) Members must exclude the following from patentability: diagnostic, therapeutic and surgical methods for the treatment of humans or animals.
 - (C) Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect morality, provided that such exclusion is not made merely because the exploitation is prohibited by their law.
 - (D) The availability of patents and enjoyability of patent rights depend on the place of invention, the field of technology and whether products are imported or locally produced.
- 18 Which of the following statements with regard to the exclusive patent licensing under the R.O.C. Patent Act is incorrect?
- (A) An exclusive license for a patent is valid only after it is recorded with the Specific Patent Agency.
 - (B) An exclusive licensee has the power, within the scope of the license granted, to exclude the patentee and third parties from exploiting the patented invention.
 - (C) An exclusive licensee may sub-license a third party to exploit the licensed patent unless otherwise agreed upon by contract.
 - (D) An exclusive patent licensee may, within the licensed scope, demand a person who is likely to infringe the patent right to prevent such infringement. However, if it is otherwise provided for in an agreement, such agreement should prevail.
- 19 Which of the following descriptions regarding the right to apply for a patent under the R.O.C. Patent Act is correct?
- (A) While the patent right is assignable and inheritable, the right to apply for a patent is strictly personal and not assignable or inheritable.
 - (B) While the patent right can be taken as the subject of a pledge, the right to apply for a patent should not be taken as the subject of a pledge.
 - (C) Where a right to apply for a patent is jointly owned, the patent application related thereto could be filed by any joint owner independently.
 - (D) Where an invention is made by an employee in the course of performing his/her duties, the right to apply for a patent thereof should be vested in the employee; where there is an agreement providing otherwise, such agreement should prevail.
- 20 Which of the following statements regarding patent exhaustion is incorrect?
- (A) The adoption of the exhaustion doctrine under the R.O.C. Patent Act is required by the Agreement on Trade-Related Aspects of Intellectual Property Rights.
 - (B) Under the R.O.C. Patent Act, after the sale of a patented product made under consent of the patentee, the patent right should not extend to the using of that particular product.
 - (C) Under the R.O.C. Patent Act, the exhaustion of the patent right can be triggered by the sale of a patented product made by the patentee anywhere in the world.
 - (D) Under the R.O.C. Patent Act, after the sale of a patented product made under consent of the patentee, such patentee can not exercise his or her patent right to prevent the owner of this particular product from reselling it.

- 21 Which of the following descriptions regarding patent application with foreign element under the R.O.C. Patent Act is correct?
- (A) Any foreign person who has no domicile or business establishment in the territory of the R.O.C. is not allowed to file an application for invention patent.
 - (B) All patent applications filed by a foreign applicant must be accepted regardless of his or her nationality.
 - (C) If a foreign applicant is a citizen of a non-member of the World Trade Organization (WTO) and whose home country does not mutually recognize priority with the R.O.C., even if the applicant has domicile or business establishment in any member of the WTO or in the territory of a reciprocal country, the applicant is not entitled to claim priority in accordance with the provisions set forth in Paragraph 1 of Article 28.
 - (D) Where an applicant has first applied for a patent in a foreign country which is a member of the 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 12 months after the filing date of the said first patent application.
- 22 Which of the following descriptions regarding patent rights under the R.O.C. Patent Act is correct?
- (A) The inventor of the invention should enjoy patent right upon completion of the invention.
 - (B) Unless otherwise provided for in the R.O.C. Patent Act, the patentee of an invention patent covering a product has an exclusive right to prevent others from importing the product for the purpose of offering for sale the product without the patentee's consent.
 - (C) The effects of an invention patent right should extend to acts done privately and for non-commercial purpose(s).
 - (D) A patentee of an invention patent may not demand a person who infringes the patent right to stop such infringement unless the infringement of invention patent occurs due to intentional act or negligence.
- 23 Which of the following statements regarding patent remedies under the R.O.C. Patent Act is incorrect?
- (A) The patentee can choose any one of the three available methods of calculation of damages under Article 97, para. 1 of the R.O.C. Patent Act.
 - (B) Where the inventor's right to be indicated as such is infringed, the inventor may request for necessary disposition(s) to have his/her name indicated or to restore the impaired reputation.
 - (C) The rights to claim for patent infringement damages should become extinguished if not exercised within 2 years after the patent infringement takes place.
 - (D) Where the patent 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 3 times of the proven loss.
- 24 When a claimed invention is rejected because it is anticipated, it means that:
- (A) The claimed invention is not novel.
 - (B) The claimed invention is obvious.
 - (C) The claimed invention is exhausted.
 - (D) The claimed invention is indefinite.
- 25 Which of the following rights can be exercised by a non-exclusive licensee of an invention patent?
- (A) To sub-license a third party to exploit the licensed patent without the consent of the invention patentee or the exclusive licensee.
 - (B) To exclude the patentee from exploiting the patented invention within the scope of the license granted.
 - (C) To practice the licensed invention within the scope of the license granted.
 - (D) To demand a person who infringes or is likely to infringe the patent right to stop or prevent such infringement.