

106 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 考 試 試 題

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 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) sets down minimum standards for the regulation of intellectual property as applied to nationals of other WTO member nations. There are certain provisions relating to patentability and exceptions under TRIPS Agreement. Please elaborate, in about 200 words, on the three permissible exceptions to the basic rule on patentability. (30 分)

二、Please translate the following provisions into English:

- (一)受雇人於職務上所完成之發明、新型或設計，其專利申請權及專利權屬於雇用人，雇用人應支付受雇人適當之報酬。(10 分)
(二)侵害行為如屬故意，法院得因被害人之請求，依侵害情節，酌定損害額以上之賠償。但不得超過已證明損害額之三倍。(10 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 Paragraph 3, Article 26 of the Paris Convention states: "Denunciation shall take effect one year after the day on which the Director General has received the notification." In the above paragraph, "Denunciation" means:
(A) Enter into force (B) Prolong
(C) Subject to approval (D) Withdrawal from
- 2 In patent practice, the initials "NPE" usually stand for:
(A) Non-patentee entity (B) Non-practicing entity
(C) Non-performance entry (D) Non-paternity event
- 3 "Company A hereby convents not to sue Company B under patent listed in Exhibit A for infringement base upon any act by Company B of manufacture, use, sale, offer for sale, or import that occurs after the effective date of this Patent License Agreement." In the above paragraph, "convents not to sue" is similar to:
(A) Accession agreement (B) Conversion agreement
(C) Non-compete agreement (D) Non-assertion agreement

- 4 The International Patent Classification, commonly referred to as the IPC, is a _____ system in which the whole area of technology is divided into a range of sections, classes, subclasses and groups. There are eight sections that are broken down into classes and subclasses. Choose the one that best completes the above sentence:
 (A)analogical (B)domical (C)hierarchical (D)vortical
- 5 According to Intellectual Property Case Adjudication Act: “An applicant seeking an injunction maintaining the temporary status quo shall provide a preliminary showing proving it is necessary to prevent material harm or imminent danger or other similar circumstances with regard to the legal relation in dispute.” In the above paragraph, “status quo” means:
 (A)The coming danger (B)The abnormal circumstances
 (C)The lucrative condition (D)The current situation
- 6 Many countries have patent systems that are similar to “utility model”, sometimes using different names. Which of the following is conceptually similar to utility model?
 (A)Innovation patent (B)Plant patent (C)Pretty patent (D)Utility patent
- 7 Article 64 (1) of Patent Cooperation Treaty states: “(a) Any State may declare that it shall not be bound by the provisions of Chapter II. (b) States making a declaration under subparagraph (a) shall not be bound by the provisions of Chapter II and the corresponding provisions of the Regulations.” The best heading for the above article should be:
 (A)Amendments (B)Declarations (C)Revisions (D)Reservations
- 8 Under Article 28 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, which of the following statements about conferred patent right is correct?
 (A)A patent should confer on its owner to prevent third parties not having the owner’s consent from the acts of: making, using, offering for sale, selling, or importing for these purposes that process at least the product obtained directly by that process where the subject matter of a patent is a process.
 (B)A patent should confer on its owner to stop third parties not obtaining the owner’s consent from the act of using the product, and from the acts of: using, offering for sale, selling, or importing for these products where the subject matter of a patent is a product.
 (C)Patent owners should have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.
 (D)Patent owners should not conclude licensing contracts.
- 9 Under Article 33 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, how many years counted from the filing date must pass before the patent right expires?
 (A)Five (B)Six (C)Ten (D)Twenty
- 10 Which of the following is not included within the purpose of enacting the R.O.C. Patent Act?
 (A)To encourage the creation of inventions, utility models and designs.
 (B)To protect the creation of inventions, utility models and designs.
 (C)To promote industrial development.
 (D)To balance different interests for the common good of society.
- 11 According to the R.O.C. Patent Act, which of the following is not classified as patents?
 (A)Audiovisual works (B)Invention patents
 (C)Utility model patents (D)Design patents

- 12 According to the R.O.C. Patent Act, which of the following statements about depositing biological materials of filing patent applications for invention involving biological materials or utilization of biological materials is correct?
- (A) When filing patent applications for inventions concerning biological materials or utilization of biological materials, the applicants should, later than the filing date, make deposits of the biological materials with domestic depositories designated by the Taiwan Intellectual Property Office.
 - (B) No deposits are required even if the biological materials involved cannot be easily obtained by people ordinarily skilled in the art.
 - (C) Applicants should, within six months after the filing dates of patent applications, submit to the Taiwan Intellectual Property Office certificates of deposit, indicating the depositories, dates of deposit and deposit numbers.
 - (D) If the required documents are not submitted within the specified time period, the deposits should be deemed not to have been made.
- 13 According to the R.O.C. Patent Act, which of the following items is not within the statutory exclusion of design patents?
- (A) Shapes of articles solely shown through their designs
 - (B) Fine arts
 - (C) Layouts of integrated circuits and electronic circuits
 - (D) Articles contrary to morality
- 14 Which of the following is patentable?
- (A) Inventions
 - (B) Abstract ideas
 - (C) Physical phenomena
 - (D) Laws of nature
- 15 Mainly but not exclusively used in chemistry, a _____ is a claim with multiple “functionally equivalent” chemical entities allowed in one or more parts of the compound. The proper format for this type of claim is: “selected from the group consisting of A, B and C”. Choose the one that best completes the above sentence:
- (A) Markush claim
 - (B) Jepson claim
 - (C) Beauregard claim
 - (D) Omnibus claim
- 16 Which of the following cannot be patentable as inventions under section 101 of the U.S. Patent Act?
- (A) New and useful machines
 - (B) Formulas
 - (C) New and useful manufactures
 - (D) New and useful compositions of matter
- 17 “The U.S. Supreme Court held that a claim for damages for patent infringement committed within the _____ cannot be opposed using a laches defense.” Choose the one that best completes the above sentence:
- (A) statute of compensations
 - (B) statute of damages
 - (C) statute of frauds
 - (D) statute of limitations
- 18 According to the R.O.C. Patent Act, which of the following statements about acceptance of foreign patent applications is correct?
- (A) Patent applications filed by foreign applicants should be accepted even if the home countries of these foreign applicants are not signatories to international treaties for protection of patent rights to which the R.O.C. is a signatory.
 - (B) Patent applications issued by a foreign applicant should not be accepted if their home countries do not conclude with the R.O.C. treaties or agreements for reciprocal protection of patent rights.
 - (C) Patent applications filed by foreign applicants should be accepted if no patent protection agreements are concluded by and between organizations or institutions of the R.O.C. and said foreign countries and approved by the respective competent authorities.
 - (D) Patent applications issued by foreign applicants should be accepted if the laws of their home countries do not accept patent applications filed by R.O.C. nationals.

- 19 A patentee may request Customs to detain the imported articles that are suspected of infringing the patent right. This is best known as:
 (A)Preshipment inspection (B)Countervailing measures
 (C)Border measures (D)Custom valuation
- 20 Article 39-1 of the R.O.C. Customs Anti-smuggling Act states: "Where import or export cargoes, other than genuine goods parallel imported, that have been declared to Customs infringes the patent right, trademark right or copyright, the importer or exporter in question shall be, except otherwise specified in other acts and regulations, imposed with a fine equivalent to one to three times the value of the cargoes, and the cargoes shall be confiscated." In the above paragraph, "confiscated" means:
 (A)Destroyed (B)Impounded (C)Inspected (D)Shattered
- 21 "The parties agree that if any part, term, or provision of this Patent License Agreement shall be found illegal or in conflict with any valid controlling law, the remaining provisions shall not be affected thereby." The above provision is generally referred to as:
 (A)Choice of Law Provision (B)Integration Provision
 (C)Severability Provision (D)Venue Provision
- 22 According to the R.O.C. Patent Act, which of the following patent application conversions is not allowed in Taiwan?
 (A)A design converted into a utility model. (B)A design converted into an invention.
 (C)An invention converted into a design. (D)A derivative design converted into a design.
- 23 According to the R.O.C. Patent Act and Enforcement Rules of the Patent Act, which of the following statements is incorrect?
 (A)When an abstract contains commercial advertisement wording, the Specific Patent Agency may notify the applicant to make amendment within a specified time limit, or notify the applicant of the amendment being made ex officio.
 (B)In case of obvious error found in the description, claim, or text or reference sign in the drawing, the Specific Patent Agency may correct the error ex officio and notify the applicant of the correction being made.
 (C)The Specific Patent Agency may, upon a request or ex officio, conduct prioritized examination of a patent application for invention if it is commercially exploited by a person other than the applicant after it is laid open.
 (D)When conducting invalidation proceedings, the Specific Patent Agency may, upon a request or ex officio, notify the patentee to appear at the Specific Patent Agency for interview.
- 24 According to the R.O.C. Enforcement Rules of the Patent Act, when a request is made for recordation of the change of the patent applicant, the document of proof shall accompany such request. In the event that the change of entitled applicant is due to amalgamation of companies, the document of proof of the amalgamation should be submitted to Taiwan Intellectual Property Office. In the above paragraph, "amalgamation" means:
 (A)Bestowal (B)Combination (C)Dismantle (D)Insolvency
- 25 According to the R.O.C. relevant patent laws and regulations, which of the following statements is incorrect?
 (A)An applicant who unintentionally fails to pay the first-year patent annual fees and the certificate fee on time may pay twice the patent certificate fee and first-year patent annual fees within six months after the original time period has expired. After the said payment has been made, the Specific Patent Agency shall publish the patent.
 (B)A patentee who unintentionally fails to pay the second or any subsequent year patent annual fee and surcharge within the six months grace period on time may apply for reinstatement of the patent rights within a year after the expiration of the grace period by paying triple the amount originally due.
 (C)A patentee who is a natural person with no capital for patent annuity may apply in writing on a yearly basis to the Specific Patent Agency for annuity exemption.
 (D)A design patent owner who is a domestic small enterprise may apply in writing for reduction of the patent annuity.