

105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（選試專業英文及基本設計）、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、Agreement on Trade-Related Aspects of Intellectual Property Rights introduced intellectual property rules into the multilateral trading system for the first time. Under the TRIPS Agreement, there are certain provisions relating to protection for industrial designs. Please elaborate, in about 200 words, on the main requirements for protection as well as scope of protection. (30 分)

二、Please translate the following provisions into English:

(一)非專屬被授權人非經發明專利權人或專屬被授權人同意，不得將其被授予之權利再授權第三人實施。(10 分)

(二)方法發明之實施，指下列各款行為：

1. 使用該方法。

2. 使用、為販賣之要約、販賣或為上述目的而進口該方法直接製成之物。

(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 Which of the following is (are) not patentable subject matter(s) for purpose of applying invention patent in the R.O.C.?

I. a therapeutic method for the treatment of a dog.

II. a transgenic dog.

III. a non-essential biological process for the production of a dog.

IV. a transgenic tulip.

(A) II and IV only

(B) I, II, and IV only

(C) II, III, and IV only

(D) I only

- 2 In the R.O.C., _____ dissatisfied with a decision of rejection may provide reason(s) to request a reexamination within two (2) months after the date on which the decision of rejection is served. And, if the patent application(s) is (are) not accepted or dismissed for formality defects or on the ground of ineligibility of the applicant, the applicant may directly file administrative remedy actions.
- I. An invention patent applicant
II. An utility model patent applicant
III. A design patent applicant
- (A) I and II only (B) I and III only (C) II and III only (D) I only
- 3 In the R.O.C., where a patentee establishes multiple pledges on the same patent for the purpose of securing multiple creditors' rights, the ranks of these pledges shall be determined according to the order of their _____.
- (A) filing of the application (B) licensing of the patent
(C) recordation of the pledges (D) disclosure of the application
- 4 Where an applicant has first applied for a patent in a foreign country, which reciprocally allows 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. And, the period of twelve (12) months prescribed is calculated from _____ of first patent application to the filing date of the R.O.C. patent application.
- (A) the day following the filing date (B) the filing date
(C) the day following the priority date (D) the priority date
- 5 Based on the principle of *ne bis in idem* set forth in the R.O.C. Patent Act, under which of the following circumstances, a person shall not be allowed to separately file an invalidation action against the same patent based on the same facts and evidence?
- I. where another invalidation action has been filed based on the same facts and evidence and considered groundless by a decision.
II. In an administrative action concerning revocation of a patent, where the Intellectual Property Court has taken into account the new evidence submitted on the same grounds for the revocation prior to the end of the oral argument, and considered groundless by a judgment.
III. where administrative remedy proceedings are filed but dismissed finally and bindingly.
- (A) I and II only (B) II and III only (C) I and III only (D) I only
- 6 In accordance with the Enforcement Rules of the R.O.C. Patent Act, the _____ shall mean the technical feature(s) which define(s) a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.
- (A) single general inventive concept (B) special technical features
(C) inventive steps (D) novelty

- 7 In the R.O.C., which of the following circumstances may any person request for an invalidation action against an invention patent?
- I. where the home country of the patentee does not accept the patent applications filed by R.O.C. nationals
 - II. where the invention patentee is not the owner of the right to apply for an invention patent.
 - III. where a right to apply for a patent is jointly owned, the patent application related thereto is not filed by all the joint owner(s).
 - IV. where an applicant files a patent application for invention and a patent application for utility model for the same creation on the same date, but fails to make a declarations.
- (A) I only (B) I and II only (C) I, II and III only (D) I and IV only
- 8 In the R.O.C., which of the following circumstances may any person, together with document(s) of proof, file an invalidation action of the granted patent term extension to the Intellectual Property Office?
- I. where a right to apply for a patent is jointly owned, the patent application related thereto is not filed by all the joint owner(s).
 - II. where it is unnecessary to obtain the regulatory approval to exploit the invention patent concerned.
 - III. where the granted term of extension exceeds the period during which the patent cannot be exploited.
 - IV. where the requester of the patent term extension is not the patentee.
- (A) I and II only (B) III and IV only (C) I, II and III only (D) II, III and IV only
- 9 In accordance with the Enforcement Rules of R.O.C. Patent Act, which of the following is not correct?
- (A) where the design is three-dimensional, the drawing(s) shall contain a perspective view
 - (B) where the design is applied to a boundless plane in form, the drawing(s) shall contain an element view
 - (C) when scaled down to two-thirds, all the details disclosed in each drawing shall still be clearly distinguished
 - (D) a drawing annotated as a reference view shall be serve to interpret the scope of the design patent
- 10 Which of the following statements about the “multiple dependent claim” is (are) correct?
- I. it shall refer to more than one other claim in the alternative only.
 - II. it may be serve as a basis for any other multiple dependent claim.
 - III. it shall be construed to incorporate by reference all the limitations of each of the particular claims in relation to which it is being considered.
- (A) I only (B) I and II only (C) I and III only (D) II and III only
- 11 Which of the following statements about the “two-part form” claim is (are) correct?
- I. it recites all or some of the elements of a known article, process, composition, or combination in the preamble to the claim.
 - II. it may include a transition such as “wherein the improvement comprises” and recite in the body of the claim only the new or modified elements, or recite the improvement.
 - III. it may be used in the form of a dependent claim.
- (A) II only (B) I and II only (C) I and III only (D) II and III only

- 12 In accordance with the R.O.C. Patent Act, which of the following is not correct?
- (A) the annuity for several years may be paid at one time, and if the annuity rate is adjusted upward, the patentee concerned will not be required to pay the deficit
 - (B) if the annuity for the second or any subsequent year is not paid within the specified time period, a late payment can be made within six (6) months after the original due date with a specified percentage addition
 - (C) where the patentee of an invention patent is a natural person, school or small and medium enterprise, the patentee may request for a reduction of patent annuity with the Intellectual Property Office
 - (D) if extension or prolongation of patent term is allowed, patent annuities shall not be paid during the extended or prolonged patent term
- 13 In accordance with the footnote 5 of Article 27 of Trade-Related Aspects of Intellectual Property Rights of World Trade Organization, for the purposes of said Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Member to be synonymous with the terms _____ and _____ respectively.
- (A) creative, applicable
 - (B) creative, useful
 - (C) non-obvious, useful
 - (D) obvious, applicable
- 14 In accordance with the Paris Convention, which of the following is not correct?
- (A) where an industrial design is filed in a country by virtue of a right of priority based on the filing of a utility model, the period of priority shall be the same as that fixed for industrial designs
 - (B) it is permissible to file a utility model in a country by virtue of a right of priority based on the filing of a patent application, and vice versa
 - (C) the periods of priority shall be twelve months for patents and utility models, and six months for industrial designs
 - (D) importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall entail forfeiture of the patent
- 15 In accordance with the Intellectual Property Case Adjudication Rules, no superior court may, on grounds of wrong jurisdiction, reverse the substantive adjudication of a civil or administrative court on an intellectual property civil or administrative action which, though not subject to the _____ jurisdiction of the intellectual property court, shall be deemed to be so subject substantively.
- (A) personal
 - (B) *in rem*
 - (C) exclusive
 - (D) subject matter
- 16 Under the R.O.C. Patent Attorney Act, which of the following statements is true?
- (A) One who has successfully passed the Patent Attorney Eligibility Examination could immediately file an application for the issuance of a Patent Attorney License.
 - (B) A patent attorney could represent clients in administrative litigations of patents.
 - (C) A patent attorney could begin his/her practice without joining the Patent Attorneys Association.
 - (D) A patent attorney shall participate in continuous educations and provide the proofs of such educations to Taiwan Intellectual Property Office (TIPO) every 3 years.

- 17 A is employed by C company as an in-house scientist to develop a new type of photovoltaic material. With the help of mass investments of C company, A successfully invents a new material—material X, in the lab owned by X company, which drastically improved the converting rate of photovoltaics to a record high level. A and C company intend to apply for a patent of material X while the employment contract between A and C company clearly stipulated that all the inventions made in the performance of employment duties shall be deemed as “work for hire” as defined by the R.O.C. Patent Act and are protected in accordance therewith. A also clearly acknowledges material X is an invention created in the performance of his employment duties with C company. Under the R.O.C. Patent Act, which one of the following statements is not correct?
- (A) The right to apply for a patent and the patent right of material X are vested in C company.
 (B) A has the inventorship of material X, and C company is only entitled to the statutory license of material X.
 (C) A is entitled to claim reasonable remuneration of material X from C company.
 (D) A is entitled to be listed as the inventor in the patent application of material X.
- 18 Under the R.O.C. Patent Act, the patent rights shall not extend to the using or reselling a patented product after the sale of a patented product made by the patentee or under consent of the patentee. This rule is best to be described as the _____ doctrine? Please choose the one below that best completes the above sentence.
- (A) equivalents (B) exclusion (C) extinction (D) exhaustion
- 19 Under the R.O.C. Patent Act, which one of the following statements is not correct?
- (A) The assigning on a patent right by the patentee shall have no *locus standi* against any third party unless it is recorded with Taiwan Intellectual Property Office.
 (B) An exclusive patent licensee may, within the scope of the license granted, exclude the patentee from exploiting the patented invention.
 (C) An exclusive patent licensee may sub-license a third party to exploit the licensed patent unless stipulated otherwise in the contract.
 (D) An exclusive patent licensee does not have the right to file the patent infringement litigation and claim for damages, notwithstanding there has been an express grant to the exclusive licensee to exercise such rights in the licensing agreement.
- 20 Concerning compulsory licensing under the R.O.C. Patent Act, which one of the following statements is not correct?
- (A) In response to national emergency, the Taiwan Intellectual Property Office (TIPO), shall follow an emergency order from the central government authorities to grant compulsory licensing of a patent.
 (B) TIPO may, upon request, grant compulsory licensing of a patent, where a later invention cannot be exploited without infringing upon a prior invention and such later invention involves an important technical advancement of considerable economic significance compared to the prior invention.
 (C) TIPO may, upon request, grant compulsory licensing of a patent, where a patentee has committed acts to restricting competition or has committed unfair competition acts, for which an investigation is initiated by the Fair Trade Commission.
 (D) TIPO may, upon request, grant compulsory licensing of a patent, where a patented invention is to be exploited non-commercially for the enhancement of public interest.

- 21 Under the R.O.C. Patent Act, the patentee of an invention patent has an exclusive right to exclude others' acts of exploiting an invention without the patentee's consent. Where such invention is a product, the acts of exploiting a patented product do not include?
- (A)The acts of making a patented product. (B)The acts of using a patented product.
(C)The acts of selling a patented product. (D)The acts of exporting a patented product.
- 22 Which one of the following remedies is not available for patent infringement under the R.O.C. Patent Act?
- (A)The damages calculated per Article 216 of the Civil Code.
(B)The damages based on the difference between the profits earned through patent exploitation after infringement and the profit normally expected through exploitation of the same patent.
(C)The total sale amount, not the net profits, of the infringing product as a punitive damages where the infringement is intentional.
(D)The amount calculated on the basis of reasonable royalties that may be collected from exploiting the invention patent being licensed.
- 23 "When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill."
- The paragraph above is best to describe which one of the patent requirements below?
- (A)Public Morality (B)Novelty (C)Enablement (D)Non-obviousness
- 24 Which of the following is patentable for design patent under the R.O.C. Patent Act?
- (A)Fine arts.
(B)The shape of an article solely dictated by its function.
(C)Computer generated icons and graphic user interface applied to an article.
(D)The layout of integrated circuits and electronic circuits.
- 25 Pursuant to the Paris Convention for the Protection of Industrial Property Art. 4, any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to _____?
- (A)the early authority (B)the right of priority
(C)the right of advancement (D)the sovereignty