

代號：70150

70650

頁次：4-1

104 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)本科目請以英文作答，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、Your client, Mr. Smith, had filed an U.S. patent application with the U.S. Patent and Trademark Office six months ago. He would like you, a registered patent attorney in R.O.C., to file a counterpart patent application with our Intellectual Property Office claiming the priority date of said U.S. patent application. The contents of the claims of said U.S. patent application include, among others, “means for printing documents....” Given that a means-plus-function claim contains a verb followed by the “ing”, this grammatical English-style expression is not inherent in Chinese language, e.g., nowhere can a Chinese character plus the “ing” be found in any form of literature. Mr. Smith asks you to provide pertinent suggestions in English to him regarding his concerns:

(一) Whether the means-plus-function claim is acceptable by our patent system? (5 分)

(二) What, if any, are these associated means-plus-function claim regulations in our patent system. (15 分)

二、Our country acceded to the WTO in January 2002 under the name “Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu,” i.e., a separate customs territory Member of the World Trade Organization (WTO).

According to the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement of WTO, what are “nationals” referred to in case like this? Provide your answer in English. (10 分)

三、You, a registered patent attorney in R.O.C., are retained by the JoJo Design (“JoJo”), a foreign company, for protecting its intellectual property in our country. Before you start filing, Mrs. Lewis, the CEO of JoJo, wants you to provide answers in English to questions as follows.

(一) What is a design? (10 分)

(二) What is the concept of “creativity” for a design? (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 On the utility model patent, which of the following statements is true?

(A) The utility model patent may be claimed on a specific technical process.

(B) The requirement of inventive step shall be examined to grant a utility model patent.

(C) The claims and the specification are indispensable for the application of a utility model patent.

(D) The term of a utility model patent will not expire until the end of twelve years after the patent application was made.

- 2 The derivative design patent is currently authorized by the Taiwan Patent Act. Which of the following statements about the derivative design patent is not appropriate?
 - (A)The application date of a derivative design patent may be subsequent to that of the original design patent.
 - (B)The publication of the original design patent is not relevant to the application date of the derivative design patent.
 - (C)The term of a derivative design patent is dependent upon that of the original design patent.
 - (D)The exclusive rights about a derivative design patent may be independently asserted by the patent without considering the original design patent.
- 3 If the Taiwan Patent Act were added a provision stating the term of a patent owned by a foreigner is 10 years after the patent application was made, what rule such the provision would have violated under the TRIPS Agreement?
 - (A)Reciprocity
 - (B)The Most-Favored-Nation Treatment
 - (C)National Treatment
 - (D)Technology Neutrality
- 4 On the technical evaluation report of a utility model patent, which of the following statements is true?
 - (A)The application of the technical evaluation report will be rejected provided that the related utility model patent expired.
 - (B)Without the technical evaluation report, the patentee can't assert the exclusive rights against the infringers.
 - (C)The competitor in the market may apply for the technical evaluation report when the related patent application has been published.
 - (D)The patentee may warn others of any potential infringing act even though the technical evaluation report is not simultaneously presented.
- 5 A filed a patent application on the invention X in U.S. on January 1, 2014. For the purpose of the international patent strategy, A is also filing a patent application of the same invention in Taiwan on November 1, 2014. But A found that B has filed the same invention in Taiwan earlier than November 1, 2014. In order to secure the novelty requirement of A's application on the invention X in Taiwan, A should follow the Taiwan Patent Act to _____ about the patent application in Taiwan.
Choose the one sentence that best completes the above sentence.
 - (A)request an earlier publication
 - (B)claim the international priority
 - (C)request a substantive examination
 - (D)amend the claims
- 6 WTO Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof.
"sui generis" means:
 - (A)superior
 - (B)unique
 - (C)inferior
 - (D)powerful
- 7 A was employed by B to develop a new touch-screen device. Without the consent of B, A has filed the patent application and is granted a patent about the invented device after A conceived a touch-screen device X running a special function the traditional devices were never embedded with. Which of the following statements is appropriate under the Taiwan Patent Act?
 - (A)While A enjoys the inventorship of X, B is entitled to the statutory license about X.
 - (B)B may request an invalidation action against A at the Taiwan Intellectual Property Office to restore B's legal status about the patent according to Article 35 of the Taiwan Patent Act.
 - (C)A and B both enjoy the joint inventorship about X.
 - (D)While B enjoys the inventorship of X, A is entitled to the statutory license about X.
- 8 _____ may be adopted as a defense against any infringement of patented pharmaceuticals made for the related research and trials to pursue the market approval of drugs under the Pharmaceutical Affairs Act.
Choose the one phrase that best completes the above sentence.
 - (A)The exhaustion doctrine
 - (B)The experimental exemption
 - (C)The prior user right
 - (D)The compulsory license
- 9 On the remedy of paragraph one of Article 96 under the Taiwan Patent Act that equips the patentee to stop from the continuous status of the patent infringement, which of the following terms is best fit for the aforesaid remedy?
 - (A)The permanent injunction
 - (B)The damages
 - (C)The preliminary injunction
 - (D)The border control

- 10 Based upon the jurisprudence of estoppel, any person can't request another invalidation proceeding against a patent again in accordance with the same evidence under the same fact provided that such the evidence has been raised in the prior invalidation proceeding and been denied as a ground to invalidate the patent before the Taiwan Intellectual Property Office.
In the above paragraph, "estoppel" means:
(A)jurisdiction (B)preclusion (C)injunction (D)confiscation
- 11 Under the same creation, A plans to file the application of the invention patent and the application of the utility model patent at same date. Which of the following statements about the aforesaid applications is true?
(A)A merely chooses either the application of the invention patent or the application of the utility model patent for further prosecution procedures at the filing date.
(B)The application of the invention patent will be automatically withdrawn provided that the utility model patent has been granted prior to the approval decision about the application of the invention patent made by the Taiwan Intellectual Property Office.
(C)If the utility model patent was finally revoked through the invalidation proceeding, the application of the invention patent will be rejected according to Article 32 of the Taiwan Patent Act.
(D)Someone infringed the utility model patent which has been granted prior to the approval decision about the application of the invention patent. The patentee is entitled to the remedies against such the infringement, other than the compensation about the exploitation of the creation during the publication of the patent application according to Article 41 of the Taiwan Patent Act.
- 12 According to the Taiwan Patent Act, which of the following statements is incorrect?
(A)Any person may file an invalidation action of the granted patent term extension to the Intellectual Property Office.
(B)Any person may request for an invalidation action against an invention patent when the invention patentee is not the owner of the right to apply for the invention patent.
(C)Any person within three years after the filing date of a patent application for invention may make a request with the Intellectual Property Office for substantive examination of the patent application.
(D)After a patent application for utility model is published, any person may file a request with the Intellectual Property Office for a technical evaluation report of utility model patent.
- 13 FRAND licensing, are licensing obligations that is often required by standards organizations for members that participate in the standard-setting process.
What does "FRAND" usually stand for?
(A)free and anti-discriminatory terms (B)free, released and non-standard terms
(C)friendly terms (D)fair, reasonable and non-discriminatory terms
- 14 The express grant of _____ conveys promises by the patentee not to practice the patent himself and not to grant any further licenses to third party. Choose the one phrase that best completes the above sentence.
(A)a sole license (B)an exclusive license (C)a non-exclusive license (D)a statutory license
- 15 _____ is an illustrative example for practicing the invention claimed, and is located within the specification of a patent. Choose the one phrase that best completes the above sentence.
(A)Prior art (B)Case reference (C)An embodiment (D)Abstract
- 16 Secondary considerations may be used as objective evidence of the actual marketplace setting to strengthen the assessment of the inventive step under patent law. Which of the following evidence is not admitted as secondary considerations?
(A)Unexpected results (B)Commercial success (C)Copying (D)Suggestion of prior art
- 17 The specification of a patent works closely the claims in the cases of patent prosecution or patent infringement. Which of the following statements about the patent specification is true?
(A)The specification serves the boundary of patent rights to secure the patentee's interest under patent law.
(B)The specification is irrelevant to the evaluation of enablement about a patent.
(C)The specification always functions with the claims but can't be unlimitedly imported to claim construction to narrow the interpretation of a claim.
(D)The specification may be considered extrinsic evidence for the purpose of claim construction.

- 18 The calculation of damages through the model of reasonable royalties is made on a hypothetical negotiation between the patentee and the infringer at the time of patent infringement.
In the above paragraph, “hypothetical” means:
(A)authentic (B)assumed (C)factual (D)reliable
- 19 The license agreement states: “Licensee hereby indemnify Licensor from any lawsuit brought against it...”
“indemnify” means:
(A)identify damage and loss (B)deny responsibility
(C)compensate damage and loss (D)equally share damage and loss
- 20 The invention defined by Article 21 of the Taiwan Patent Act serves an eligible subject-matter of a patent. Which of the following statements about the invention is true?
(A)All creations related to DNA modification should not be considered the eligible inventions under the Taiwan Patent Act on the ground that such the creations are of nature products.
(B)The software-related creations should not be considered the eligible inventions under the Taiwan Patent Act to avoid the monopoly enjoyed by the patentee over algorithm or abstract ideas.
(C)The method to produce the specific microorganisms may be admitted as an eligible invention according to the Taiwan Patent Act.
(D)The business model may be an eligible invention without considering any technical effect from such the model.
- 21 Concerning the application of an invention patent, _____ shall disclose the invention in such clear and sufficient terms as to enable a person ordinarily skilled in the art to which it pertains to carry out the same.
(A)claims (B)the specification
(C)the deposit of biological material (D)the demand letter
- 22 Compulsory licensing is designed to reconcile the conflicting interests between patent protection and public health under patent law. Which of the following statements about compulsory licensing admitted by the Taiwan Patent Act is true?
(A)Exploitation of a compulsory license shall be predominantly for the supply of domestic market without exceptions.
(B)Taiwanese generic manufacturers can’t file an application of compulsory licensing in Taiwan and export the patented drugs to any state with insufficient or no manufacturing capacities in the pharmaceutical sector where the epidemics have been spreading.
(C)Compulsory licensing can’t be made until the requestor has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such effort have not been successful within a reasonable period of time.
(D)Under a compulsory licensing, the licensee of a compulsory license won’t need to pay appropriate remuneration to the patentee.
- 23 According to the Taiwan Patent Act, which of the following statements is incorrect?
(A)The Intellectual Property Office may advance the laying-open of a patent application upon the request of the applicant.
(B)The term of a utility model patent shall expire after a period of ten years starting from the filing date.
(C)If extension of patent term is allowed, patent annuities shall still be paid during the extended patent term.
(D)The duration of relevant time periods as specified in the Taiwan Patent Act shall include the beginning date thereof.
- 24 Although the specification should be clear and straightforward with avoidance of unnecessary technical jargon, the use of recognized terms of art is acceptable, and will often be desirable. Terms already having an established meaning should not be allowed to be used to mean something different if this is likely to cause confusion. There may, however, be circumstances where a term may legitimately be borrowed from a(n) _____ art. Terminology and signs must be consistent throughout the application.
Choose the one that best completes the above sentence.
(A)conscious (B)analogous (C)erroneous (D)extemporaneous
- 25 According to the Taiwan Patent Act, which of the following statements is incorrect?
(A)Where a patent contains more than one claim, an invalidation action may be filed against parts of the claims.
(B)An invalidation statement shall not be modified, added or narrowed after filing.
(C)Where an invention patent is revoked finally and bindingly, the effect of patent right shall be deemed not to have existed.
(D)An invalidation action may be withdrawn by the requester before a decision concerned has been rendered. However, if the patentee has already submitted a response, such withdrawal shall be consented by the patentee.