

107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：7-1

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 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 the burden of proof in civil litigation involving patented process. Please elaborate, in about 200 words, on those provisions. (30 分)

二、Please translate the following provisions into English:

(一)新型專利權人之專利權遭撤銷時，就其於撤銷前，因行使專利權所致他人之損害，應負賠償責任。(10 分)

(二)下列各款，不予設計專利：1. 純功能性之物品造型。2. 純藝術創作。3. 積體電路電路布局及電子電路布局。(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 Damages by the theory of _____ may be measured as the difference between the patentee's pecuniary condition after the infringement, and what its condition would have been if the infringement had not occurred.

(A) reasonable royalty

(B) infringer's profit

(C) lost profit

(D) compulsory licensing

- 2 As the inventor's lexicography, _____ sometimes may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess.
- (A) the dictionary (B) the specification
(C) the learned treatise (D) the inventor testimony
- 3 Under the identical invention, there are two patent applications filed by the different inventors at different time. Lack of _____ may be assumed about the later patent application, provided that the earlier patent application was published after the filing date of the later patent application.
- (A) novelty (B) utility (C) inventive step (D) enablement
- 4 The person with ordinary skill in the art (PHOSITA) is a legal fiction in patent law, who is presumed to be a skilled practitioner in the relevant field of technology and to have had access to everything in the prior art. Which of the following is not within the functions of PHOSITA affirmed by patent law?
- (A) claim construction (B) damages calculation
(C) determination of inventive step (D) determination of enablement
- 5 X conceived an invention about the improvement of air duct of a hair dryer. Y didn't contribute to the aforesaid conception but served as an assistant for X's administrative affairs. On May 5, 2018, without X's consent, Y sold the aforesaid conception on the hair dryer to Z for manufacture and marketing of the hair dryers embedded with the aforesaid conception. The aforesaid hair dryers made by Z were put on the market on May 20, 2018. On July 5, 2018, X filed a patent application for the aforesaid conception with Taiwan Intellectual Property Office (TIPO). Unexpectedly, it was found that W actually has filed another patent application in accordance with the identical conception that came from W's independent invention, on June 5, 2018, and requested the publication on June 20, 2018. If you were an examiner employed by TIPO, which of the following statements is in accord with Taiwan Patent Act?
- (A) X and Y are the joint inventors on the aforesaid invention.
(B) The novel requirement of X's patent application may be satisfied since the filing is within the grace period under Article 22 of Taiwan Patent Act.
(C) The novel requirement of X's patent application may be satisfied since X may enjoy the interest of priority to deem the filing date as May 5, 2018.
(D) The novel requirement of X's patent application may be failed since W has filed and published the patent application, based upon the same invention, respectively, on June 5 and 20, 2018.

- 6 A Means-Plus-Function claim indicates a limitation in a claim for a combination may be expressed as a means for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. If there is no corresponding structure disclosed in the specification, the limitation should be deemed as failure of requirement of ____.
- (A) enablement (B) inventive step (C) novelty (D) indefiniteness
- 7 Which of the following is qualified as subject matter of a patent in accordance to Taiwan Patent Act?
- (A) The microbiological process.
- (B) The method for treatment of the animal body by surgery practiced on the animal body.
- (C) The simple discovery of the sequence or partial sequence of a gene about the human.
- (D) The business method.
- 8 In regard to the grant of the exclusive licensing about the patent, which of the following statements is true?
- (A) Under the exclusive licensing, within the licensed field of use, the licensor is entitled to practice the claims without a need to seek permission from the licensee.
- (B) The licensee under the exclusive licensing has no standing under patent law to take an action against the infringer, provided that the infringement occurred relates to the licensed field of use.
- (C) The registration with Taiwan Intellectual Property Office is necessary under patent law to validate the exclusive licensing.
- (D) Unless otherwise stipulated by the agreement, the licensee under the exclusive licensing is entitled to sublicense its original licensed scope to the third party without the consent of the licensor according to patent law.
- 9 More extensive protection on patent rights than what the TRIPs Agreement has provided is often found in many bilateral or multilateral intellectual property treaties under the WTO system. The phenomena is called as “TRIPs Plus”. What principle admitted by the TRIPs Agreement is the authority to support and justify “TRIPs Plus”?
- (A) The principle of national treatment
- (B) The principle of minimum standards
- (C) The principle of the most-favoured-national treatment
- (D) The principle of technological “non-discrimination”

- 10 Like other jurisdictions, the post-grant amendment of invention patent is admitted by Taiwan Patent Act. Which of the following statements is true?
- (A) The litigation of the patent concerned about infringement won't influence the request to amend such patent by the patentee in front of Taiwan Intellectual Property Office.
 - (B) The post-grant amendment may be done in such a way to enlarge the scope of the claims of the original patent within two years from the grant of the original patent.
 - (C) The post-grant amendment of a patent shall take effect upon the date of approval of the amendment request.
 - (D) The new matters may be introduced to the request of the post-grant amendment of a patent.
- 11 On determining the requirement of the inventive step, an examiner found that a reference, as prior art, would lead a person with ordinary skill in the art (PHOSITA) in a direction divergent from the path that was taken in the claim concerned under the patent application. Based upon the aforesaid fact, which of the following is true?
- (A) The aforesaid fact might be regarded evidence supporting the inventive step of the claim concerned.
 - (B) The aforesaid fact might be regarded evidence opposing the inventive step of the claim concerned.
 - (C) The aforesaid fact might be regarded evidence supporting the novelty of the claim concerned.
 - (D) The aforesaid fact might be regarded evidence supporting the enablement of the claim concerned.
- 12 If no marking about the patent certificate number is fixed on the patent product, which of the following legal effects is provided by Taiwan Patent Act when the patent without marking is infringed upon?
- (A) The marking about the patent certificate number has nothing to do with the remedy.
 - (B) The patentee is not entitled to any remedy on the ground that the patent without marking is invalid.
 - (C) The patentee is not entitled to any remedy on the ground that the patent without marking never shows any public notice to the third parties.
 - (D) To seek damages, the patentee should prove that the infringer knows or has a reason to know the infringed product protected by the patent.

- 13 X is among the least developed countries recognized by the United Nations. Since the bird flu has been spreading over the country over six months and the toll of death is astonishingly increasing. In order to import sufficient and affordable medicine to assuage the damage of the pandemic, X plans to negotiate with Taiwanese pharmacy company Y, and asks Y to apply for the compulsory licensing on Patent M registered in Taiwan that embodies the medicine B for treating the aforesaid bird flu. According to the Taiwan Patent Act, which of the following statements is appropriate?
- (A) Y is not entitled to request the compulsory licensing on Patent M since the bird flu is not the disease defined in Article 90 of Taiwan Patent Act.
 - (B) Y is not entitled to request the compulsory licensing on Patent M since the provisions of the compulsory licensing are designed to mainly facilitate the demand in the domestic market.
 - (C) Y is entitled to request the compulsory licensing on Patent M, provided that X could prove that it has insufficient or no manufacturing capacities in the pharmaceutical.
 - (D) Y is not entitled to request the compulsory licensing on Patent M unless Y has made efforts to obtain authorization from the patentee concerned on reasonable commercial terms and conditions and such efforts have not been successful within a reasonable period of time.
- 14 Under which of the following occasions, the final notice of patent examination is in accord with Taiwan Patent Act?
- (A) The final note may be issued at any stage of patent examination.
 - (B) The final note may be issued when the amendment made during the reexamination stage still entails grounds for unpatentability.
 - (C) The final note may not be issued as soon as the applicant requests the reexamination according to Article 49 of Taiwan Patent Act.
 - (D) The final note may not be issued as soon as the applicant requests the divisional application according to Article 34 of Taiwan Patent Act.
- 15 According to Taiwan Patent Act, on the aspects of patent prosecution or patent assertion, the utility model patent may be distinguished from the invention patent. Which of the following statements is true?
- (A) An application of utility model patent should be published by Taiwan Intellectual Property Office no latter than 18 months from the filing date.
 - (B) After finding potential infringing activities, the patentee of the utility model patent is entitled to send the cease and desist letter to the suspected specific party, even though the patentee has not requested a technical evaluation report on the patent concerned.
 - (C) The provisions on compulsory licensing are not applied mutatis mutandis to the utility model patents.
 - (D) Subject to the filing date of the original application, an application of utility model patent may be converted to an application of invention patent.

- 16 Which of the following statements is incorrect?
- (A) 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 recordation.
 - (B) Where a patent right is jointly owned, all joint owners must consent in order to abandon the patent right.
 - (C) Where a patent right is jointly owned, a joint owner may abandon his share only with the consent of all other joint owners.
 - (D) Where a patent right has been pledged, the patentee may abandon the patent right only with the consent of the pledgee.
- 17 Article 26, para. 1 of Taiwan Patent Law provides, "The description shall fully disclose the invention in a manner clear and sufficient for it to be understood and carried out by a person ordinary skilled in the art." Which requirement is contained in this provision?
- (A) Enablement (B) Inventive step (C) Novelty (D) Nonobviousness
- 18 Which of the following is most likely to be granted an invention patent?
- (A) A mathematical algorithm
 - (B) A law of nature itself
 - (C) The rules to play a game
 - (D) A mechanism used to register the score of a game
- 19 According to Taiwan Patent Law, there are several circumstances under which Taiwan Intellectual Property Office may grant compulsory licensing of a patent. These grounds include:
- ① where a patented invention is to be exploited non-commercially for the enhancement of public interest;
 - ② where a later invention or utility model patent cannot be exploited without infringing upon a prior invention or utility model patent, and where the later invention or utility model patent involves an important technical advancement of considerable economic significance in relation to the prior invention or utility model patent; or
 - ③ where a patentee has committed acts restricting competition or has committed unfair competition acts, for which a judgment has been made by a court of law or a decision has been rendered by the Fair Trade Commission of the Executive Yuan.
- On what grounds shall a request for compulsory licensing of a patent involving semiconductor technology be based?
- (A) ① or ② only (B) ② or ③ only (C) ① or ③ only (D) ①, ② or ③

- 20 According to Taiwan Patent Law, the term “the owner of the right to apply for a patent” shall mean an inventor, a utility model creator, a designer, or the assignee or successor thereof. Here the term “successor” means _____.
(A) someone who is successful
(B) someone who is a predecessor
(C) a successful innovator
(D) someone who succeeds to the rights of a former owner
- 21 According to the TRIPs, which of the following statements is incorrect?
(A) Members may exclude inventions from patentability in order to protect order public or morality.
(B) Members may exclude inventions from patentability whenever the exploitation is prohibited by their law.
(C) Members may exclude inventions from patentability in order to avoid serious prejudice to the environment.
(D) Members may exclude inventions from patentability in order to protect human, animal, plant life or health.
- 22 Which of the following remedies is often said to be constructed on the basis of a hypothetical negotiation?
(A) permanent injunction
(B) temporary restraining order
(C) reasonable royalties
(D) accounting of profits
- 23 Which description of patent rights is incorrect?
(A) The patentee has the right to make, use, or sell the invention.
(B) The patentee has the right to refrain from making, using, or selling the invention.
(C) The patentee is obliged to exploit the invention.
(D) At the expiration of the term of protection, the invention is automatically dedicated to the public.
- 24 Which of the following is not a limitation on the application of the doctrine of equivalent?
(A) file wrapper estoppel
(B) dedication to the public rule (the disclosure-dedication rule)
(C) prosecution history estoppel
(D) the long-felt-but-unfulfilled-need doctrine
- 25 Which of the following is not a step for determining nonobviousness?
(A) a survey of the scope and content of the prior art
(B) identifying a specific utility
(C) an examination of the differences between the invention and the prior art
(D) a determination of the level of ordinary skill in the art