



Patent Examination Guidelines 2010

State Intellectual Property Office of P.R.China

Nov. 2011

As pursuant to Rule 122 of the Implementing Regulations of the Patent Law, the State Intellectual Property Office enacts Guidelines for Patent Examination. These Guidelines detail and supplement the provisions of the Patent Law and its Implementing Regulations, and thus serve as bases and standards for the Patent Office and Patent Reexamination Board to refer to and follow in enforcing the relevant laws and regulations. They are also regulations which the related parties shall abide by at each of the aforesaid stages.

Adaptive revisions

Novelty

Invention-creation developed relying on
genetic resources

Confidentiality examination

design patent

novelty

Novelty means that the invention or utility model **does not form part of the prior art**, nor has **any entity or individual filed previously** before the date of filing with the Patent Office an application relating to the identical invention or utility model disclosed in patent application documents published or patent documents announced on or after said filing date.

novelty

Prior Art

According to Article 22.5, the prior art means any technology known to the public before the date of filing in China or abroad.

The means of disclosure of prior art

- disclosure by publications
- disclosure by use
- disclosure by other means

without limitation on territory

novelty

Reference Documents

- mainly publications in substantial examination
- documentary evidence recording contents of public use or oral disclosure in invalidation procedure

Conflicting Applications

The applications relating to the identical invention or utility model which have been filed by any entity or individual prior to the filing date of the application being examined and published or announced on or after said filing date, which are called “conflicting applications”, will take away the novelty of the application being examined.

non-double patenting principle

For any identical invention-creation, only one patent right shall be granted. Where **an applicant files on the same day** applications for both patent for utility model and patent for invention relating to the identical invention-creation, and the applicant **declares to abandon the patent for utility model** which has been granted and **does not terminate**, the patent for invention may be granted. (Article 9)

The applicant shall **state respectively upon filing the application** that another patent application for the identical invention-creation has been filed by the applicant. If the applicant fails to do so, the issue shall be handled according to the provisions of Article 9, paragraph one of the Patent Law, only one patent right shall be granted for any identical invention-creation. (Rule 41)

“Acquisition or use of the genetic resources is not consistent with the provisions of the laws and administrative regulations” of Article 5 means that the acquisition or use of the genetic resources is not beforehand approved by relevant administrative departments or licensed by relevant right holder in accordance with the provisions of relevant laws and administrative regulations of China.

Specific Requirements for the Source Indication

- ★state that fact in the request table
- ★ fill in the specific information of the direct and original source of the genetic resources in the Registration Form

Where the genetic resources are directly obtained from a certain institution, such as depository institution, seed bank (germ plasm bank), gene library etc., if the institution knows and can provide the original source, the applicant shall provide the information of the original source of the genetic resources. Where the applicant fails to indicate the original source, he shall state the reasons thereof, and provide relevant evidence if necessary, for example, state “the seed bank does not make a record of the original source of the genetic resources”, or “the seed bank can not provide the original source of the genetic resources”, and provide relevant written certificate issued by the seed bank.

Said filing an application for patent abroad mentioned in Article 20, refers to filing a patent application to the patent administration department established by a foreign country or an intergovernmental patent cooperation organization, or filing of an international patent application to the patent administration department established by a foreign country or an intergovernmental patent cooperation organization, or the International Bureau of the World Intellectual Property Organization designated as the PCT Receiving Office.

Request for Confidentiality Examination

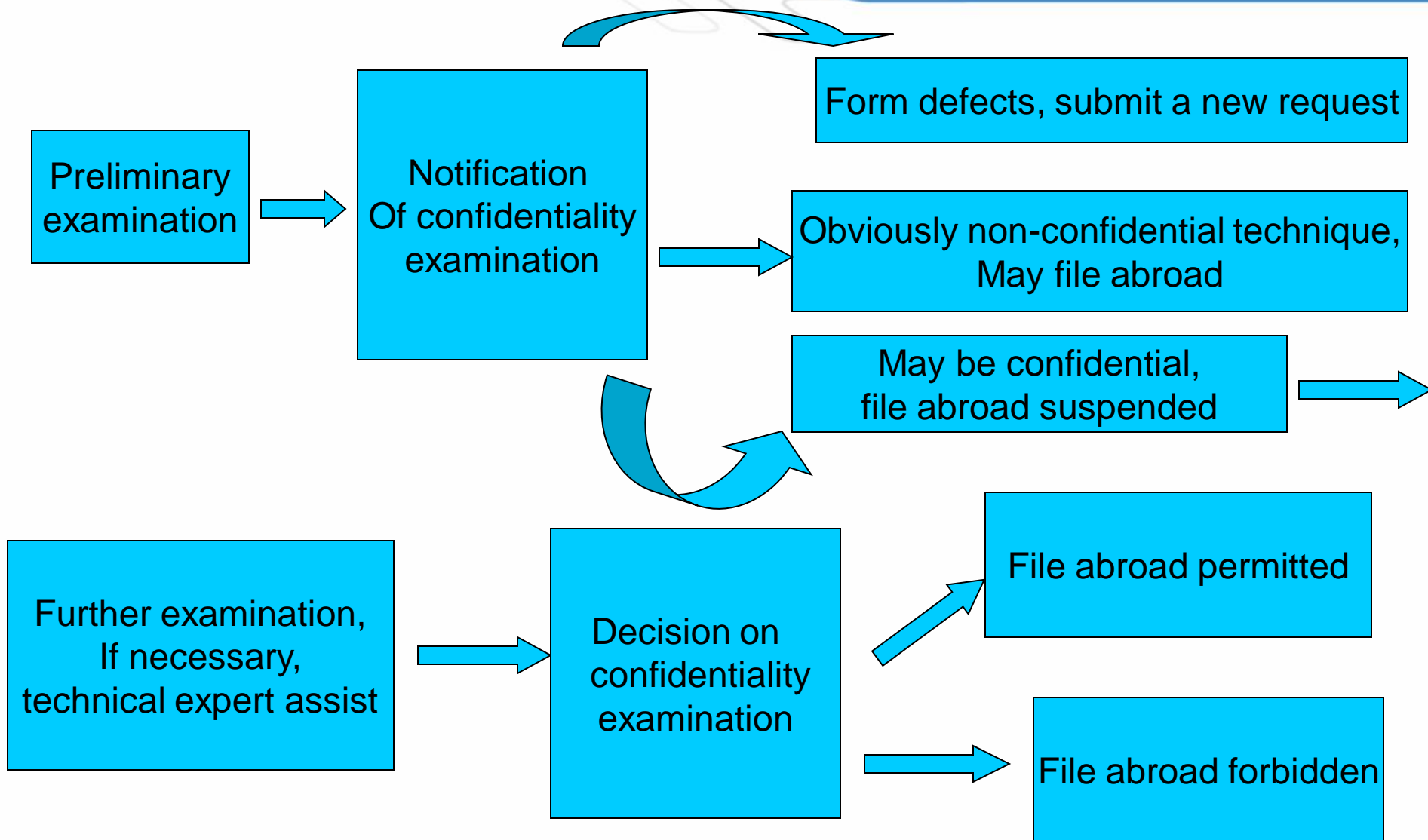
Documents for the request (all shall be in Chinese)

- ★Request table for Confidentiality Examination
- ★Description of the technical solution.

The petitioner may submit the corresponding documents in foreign languages for the examiner's reference.

The description of the technical solution may be drafted according to the provisions of drafting manner of patent description.

Confidentiality examination



If the petitioner fails to receive the Notification of Confidentiality Examination within 4 months from the filing date of its or his request, it or he may file a patent application abroad with the relevant technical solution.

If the petitioner, after receiving the notification of confidentiality examination, fails to receive the Decision on Confidentiality Examination within 6 months from the filing date of its or his request, it or he may file a patent application abroad with the relevant technical solution.

two-dimensional printing design

Designs of two-dimensional printing goods, made of patterns, colours or their combination, which serve mainly as indicators, no patent right shall be granted.

(Article 25.1(6))

Design patent

two-dimensional printing design

Where an design patent application meets the following three requirements, the application falls under Article 25. 1(6) and no patent right shall be granted:

- (1) the product for which the design is applied is a plane printed matter;
- (2) the design is made of patterns, colours, or their combination; and
- (3) the design serves mainly as indicator.

Design patent

No patent right granted



Fig.1 mark



Fig.2 mark

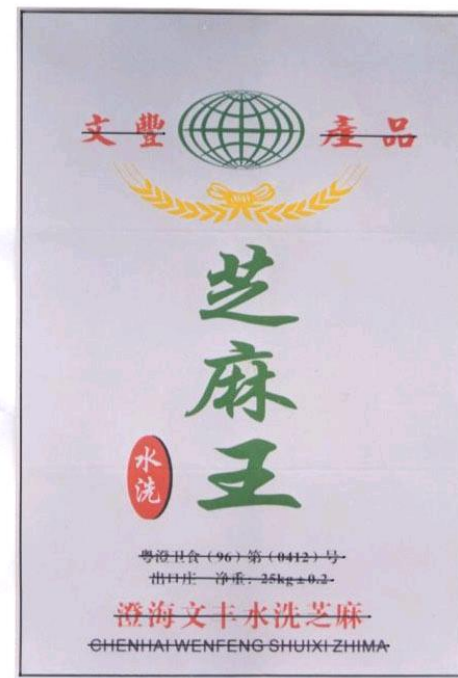


Fig.3 wrapping bag

Design patent

Patent right granted



Fig.1 mark



Fig.2 wrapping bag

Design patent

Brief explanation

For an design patent application, a brief explanation of the design shall be submitted. (Article 27)

The extent of protection of patent right for design shall be determined by the design of the product as shown in the drawings or photographs. The brief explanation may be used to interpret the design of the product as shown in the drawings or photographs. (Article 59.2)

Brief explanation

According to Rule 28, a brief explanation shall include the following contents:

- (1) the title of the product incorporating the design;
- (2) the use of the product incorporating the design;
- (3) the essential features of the design; and
- (4) which drawing or photograph is designated to best show the essential features of the design

Foreign Priority

If the earlier application does not include any brief explanation of the design, and if the brief explanation filed by the applicant in accordance with the provision of Rule 28 does not go beyond the extent of protection determined by the drawings or photographs of the earlier application documents, the priority will not be affected. (Rule 31.4)

Similar designs for the same product

According to Article 31.2, two or more similar designs for the same product may be filed as one application.

No more than 10 similar designs in one application may be claimed.

Similar designs for the same product

According to Rule 35.1, the other designs for the product shall be similar to the main design designated in the brief explanation.

similarity judgement

Normally through overall observation, if the other designs and the main design have same or similar design features, and if the difference between them lies in slight changes in some fine details, usual design of this category of the products, the repeated and continuous arrangement of a design unit or mere change of colour element, they are considered as similar designs.

Design patent

Similar designs



Front view of main design



Front view of design 1



Front view of design 2



Front view of design 3

Design patent

Examination in Accordance with Article 23

According to Article 23.1, any design for which patent right may be granted shall not be a prior design, nor has any entity nor individual filed before the date of filing an application relating to the identical design and disclosed in patent documents announced after the date of filing.

The prior design referred to in this Law means any design known to the public before the date of filing in China or abroad.

Design patent

Examination in Accordance with Article 23

There is no design identical or substantially identical with the patent concerned in the prior designs, and no identical or substantially identical patent or patent application constitutes a conflicting application.

Design patent

Identical design

Dimension differences



Materials substitution



Design patent

Identical design

technical performance differences



Touch control switch



Sound control switch

Design patent

Substantially Identical Designs

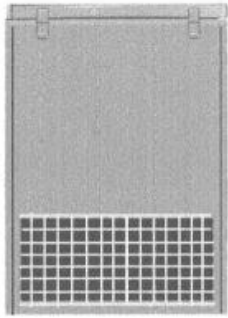
only slight changes in details which cannot be noticed by normal attention



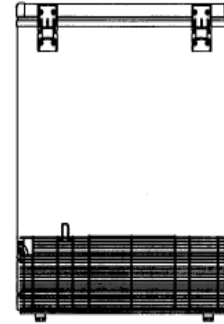
Design patent

Substantially Identical Designs

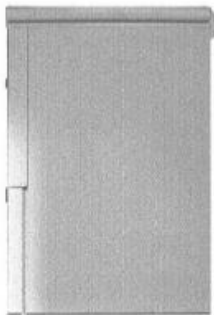
parts which cannot be seen easily or cannot be seen at all when in use



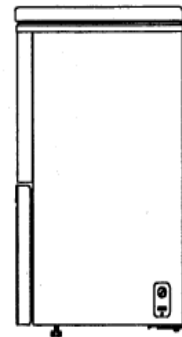
后视图



后视图



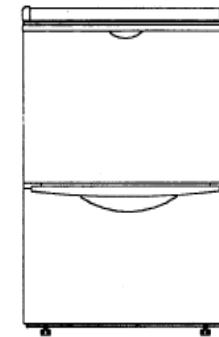
右视图



右视图



主视图



主视图

Design patent

Substantially Identical Designs

substitution of one design element as a whole by the usual design commonly known



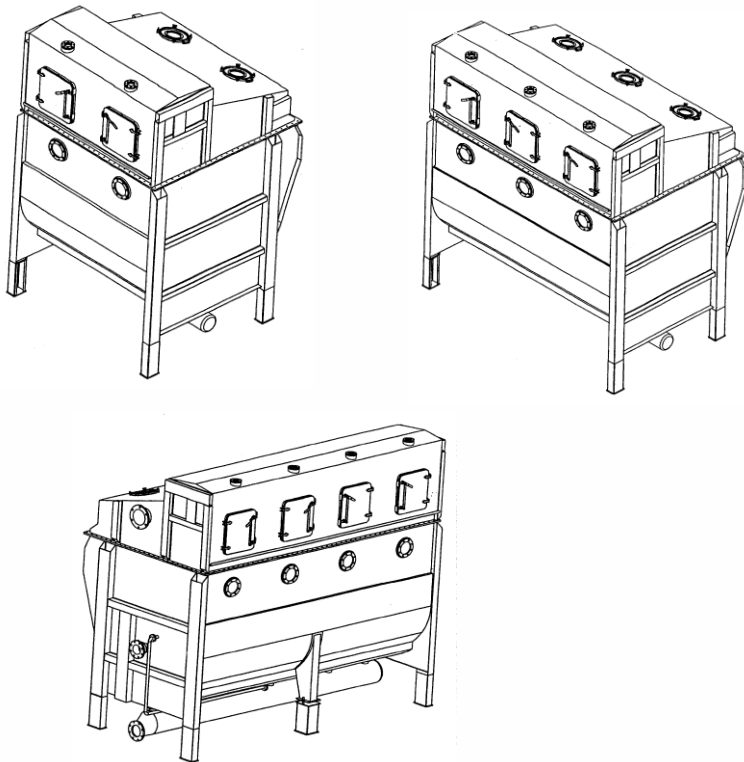
Reference design

Design patent

Substantially Identical Designs

repeated and continuous
arrangement

mirror image.



Examination in Accordance with Article 23

According to Article 23.2, any design for which patent right may be granted shall significantly differ from prior design or the combination of prior designs or the combination of prior design features.

Transformation of prior design



立体图P2

打开状态参考图P2



Known transformation inspiration



Prior design:dice

CD disk case

Patent right granted



stool



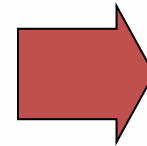
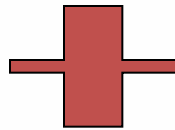
flagon

Combination of prior design features

aggregating the prior design of shape with the prior pattern, colour or their combination



Prior shape design



combination of pattern and color of any product

Examination in Accordance with Article 23

According to Article 23.3, A design patent which is found to be in conflict with any other person's legitimate right obtained before the patent's filing date(or the priority date,where priority is claimed)shall be declared invalid.

Right conflict



wrapping bag



prior trademark right



Thank you!