Inputs from Member States and Regional Patent Offices to the Thirty-Eighth Session of the Standing Committee on the Law of Patents

Respondent Information

First Name:

[redacted]

Last Name:

[redacted]

Country:

China

IP Office

China National Intellectual Property Administration

Job title

Program Officer

Email address:

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Disclaimer:

The information provided in response to this questionnaire is understood to be submitted on behalf of the Member State or regional organization concerned, through its competent authority and in accordance with its applicable official internal procedures.
It is assumed that the person completing and submitting the questionnaire is duly authorized to do so and that the information reflects the official position or practice of the Member State or organization, to the extent possible.

I confirm that I have read and understood the statement above and that I agree with its contents.

i) Study on the determination of inventorship and conditions of foreign filing, with a view to identifying potential challenges for innovators in the cross-border collaborative environment

1. Which of the following does the applicable legal framework in your jurisdiction require before a patent application can be filed in another country or at a regional patent organization?

Foreign filing license

2. With which specific authority or government body must a request for a foreign filing license be filed?

for CNIPA

3. Prior to taking which specific actions must a request for a foreign filing license be filed?

Any unit or individual that intends to apply for patent in a foreign country for an invention or utility model accomplished in China shall submit the matter to CNIPA for confidentiality examination.

4. Please list the statutes or guidance documents that patent applicants in your country can consult to inform themselves of the foreign filing requirements and the procedure to follow.

Available for reference: Patent Law of the People's Republic of China, Implementing Regulations of the Patent Law of the People's Republic of China, and Guidelines for Patent Examination.

6. What specific criteria will trigger the Foreign Filing Conditionality?

The place of invention;

7. Does your law allow for a deemed license or automatic approval, if the Office does not act or respond within a specific time period?

No

8. What specific forms or documents must an applicant submit to request a foreign filing license?

A Request for Confidentiality Examination for Filing Patent Applications Abroad shall be submitted. Where a patent application is to be filed directly in a foreign country, a description of the technical solution shall also be submitted.

9. What are the legal consequences if an applicant files a patent application abroad without obtaining a required foreign filing license?

According to Article19.4 of patent law, For an invention or utility model, if a patent application has been filed in a foreign country in violation of the provisions of the first paragraph of this Article, it shall not be granted a patent right while filing a patent application in China.

10. Does your legislation provide a mechanism for obtaining a retroactive foreign filing license?

No

14. If a foreign filing license is denied, what legal consequences follow for the invention and/or any related domestic patent application?

If an application relates to national security or other major interests of the State and confidentiality needs to be maintained, it shall be converted into a national defense patent application or a confidential patent application.

15. Is there any mechanism in place under the applicable legal framework in your jurisdiction to compensate for the loss of opportunity of obtaining a patent if a foreign filing license is denied?

No

16. Does your jurisdiction’s patent law provide for the imposition of a “Secrecy Order” (or other similar national security restrictions) that prohibits or restricts an applicant from filing for patent protection in other jurisdictions?

Yes

What is the nature/impact of this restriction regarding foreign filing?

According to Article 4 of patent law. Where an invention-creation for which a patent is applied for relates to national security or other major interests of the State and confidentiality needs to be maintained, the patent application shall be handled in accordance with the relevant prescriptions of the State.

Final review before submission

Confirmation of submission

I am aware that by clicking "Submit" below, my responses will be sent to the SCP Secretariat.