



**National Intellectual
Property Administration
of the People's Republic
of China**



Comparative Study on Examination Procedures of Patents

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Foreword

For the purpose of implementing the *Common Initiatives for Strengthening Cooperation between Countries along the Belt and Road in the Field of Intellectual Property* and the *Joint Statement on Pragmatic Cooperation in the Field of Intellectual Property among Countries along the Belt and Road* (BRI Countries) and fostering the pragmatic cooperation among BRI Countries, the Comparative Study on Examination Procedures of Patents is conducted aiming to promote the exchanges among BRI Countries on national patent examination procedures, enhance the mutual trust of the BRI IP authorities, and provide information support to IP users of BRI Countries when filing patent applications abroad.

The CNIPA presented the goal, content and schedule of this project to the BRI Countries. On a voluntary participation basis, the first phase of the study report is completed by four patent offices, which are the China National Intellectual Property Administration (CNIPA) from east Asia, the State Service of Intellectual Property and Innovation under the Government of the Kyrgyz Republic (Kyrgyzpatent) from middle Asia, the Federal Service for Intellectual Property (ROSPATENT) from Europe and the Intellectual Property Office of Vietnam (IP VIETNAM) from southeast Asia.

Generally, the procedure rules in each office relate to a board scope in examination practice, in which the provisions in many items among the offices are same or similar. However, there are still some differences. The report should serve as foundation to the Comparative Study, and as reference to the IP users.

In the preparation of this report the CNIPA collected some information through a questionnaire, and it is not considered as an acceptance from each office to the contents of them. Therefore, there is no requirement for each B&R office to implement what the questionnaire contains.

1. General Procedure Rules

(1) Documents submitted by applicant

In all the four offices, the application documents must include claims, description, drawings (if any), abstract and information of applicant(s) and inventor(s). If applicants are represented by patent agents, the information of patent agents should be provided. As for the contents of the application documents, the offices have detailed provisions:

(i) Description

In all the four offices, the description should include technical field, prior art, contents of invention, description of figures (if necessary) and specific mode for carrying out the invention etc.

In the CNIPA, the text of the description may contain chemical, mathematical formulas, or tables, but drawings shall not be included. As for an application relating to nucleotide or amino acid sequence, such sequence listing shall be a separate part of the description. Where an invention for which a patent is applied for concerns a new biological material, the applicant needs to deposit a sample of the biological material with a depositary institution designated by the CNIPA, in which the scientific name (with its Latin name) and the title and address of the depositary institution, the date on which the sample of the biological material was deposited and the accession number of the deposit shall be included.

In the IP VIETNAM, there are special rules for the following four kinds of inventions:

Genetic sequences-related inventions: a list of genetic sequences must be included in the description;

Biological material-related inventions: biological material sample and competent depositary office are required.

Pharmaceutical-related inventions: results of clinical trials and pharmaceutical effects of the pharmaceutical must be included in the description.

Genetic resource and/or traditional knowledge -related inventions: origin of the gene source and/or the traditional knowledge is required.

(ii) Claims

In the CNIPA, the claims may contain chemical or mathematical formulas, and tables if necessary, but shall not include drawings.

(iii) Drawings

In all four offices drawings are optional.

(iv) Abstract

In all the four offices, an abstract must be included in the application. The abstract must indicate the title of the invention and the technical field to which the invention pertains, and provide a concise summary of the description, claims and drawings.

In the CNIPA, where the applicant has not submitted such a figure, the examiner may invite the applicant to make rectifications, or may designate one *ex officio* and notify the applicant accordingly. Where the examiner considers that there is no suitable figure to be designated, he may not invite the applicant to make rectifications.

In the ROSPATENT the abstract drawing is not required, while in the other three offices the abstract drawing is optional.

(2) Withdraw

(i) The applicant to withdraw an application for a patent initiative

In the four offices, an applicant may withdraw his/her patent application at any time as long as the patent application is pending at the Patent Office.

In the ROSPATENT, the timing is before the state registration of the invention, utility model or industrial design in the appropriate register.

In the CNIPA, any applicant may request to withdraw his patent application at any time before the patent right is granted. When withdrawing a patent application, the applicant shall submit a declaration to withdraw the patent application with materials signed or sealed by all the applicants certifying agreement on the withdrawal of the patent application, or only a declaration of

withdrawing the patent application signed or sealed by all the applicants. Where any patent agency is appointed, the formalities of withdrawing the patent application shall be gone through by the patent agency with materials signed or sealed by all the applicants certifying agreement on the withdrawal of the patent application.

(ii) Patent application deemed to be withdrawn

In the four offices, if the applicant fails to make any response within the specified time limit, the application shall be deemed to have been withdrawn.

(3) Restoration

(i) Because of force majeure

In the four offices, because of force majeure, resulting in loss of his or its rights, he or it may, within the specified time from the date on which the impediment is removed, request to restore his or its rights.

In the CNIPA, where a time limit prescribed in the Patent Law or these Implementing Regulations is not observed by a party concerned because of force majeure, resulting in loss of his or its rights, he or it may, within the specified time from the date on which the impediment is removed, request to restore his or its rights.

Any right lost due to failure to meet the following four kinds of time limit, namely, the grace period for non-prejudicial disclosures, the priority period, the patent term, and the prescription for instituting legal proceedings of infringement, cannot be restored.

To request for restoration of right, the party concerned shall submit a request for restoration of right and state the reason within two months from the date on which the impediment is removed, at the latest within two years immediately following the expiration of that time limit, and attach, if necessary, the relevant supporting documents.

In the Kyrgyzpatent and ROSPATENT, the request for restoration of right shall be submitted within 12 months, together with the reasons and fee.

In the IP VIETNAM, the request for restoration of right shall be submitted, together with the reasons.

(ii) Because of other reasons

The four offices have different rules as follow:

In the CNIPA, where a time limit prescribed in the Patent Law or these Implementing Regulations is not observed by a party concerned because of any other justified reason, resulting in loss of his or its rights, he or it may, within the prescribed period of time, request the patent administration department to restore his or its rights.

To request for restoration of right, the party concerned shall submit a request for restoration of right, state the reason (attach, if necessary, the relevant supporting documents), and pay the fee for restoration of right within two months from the date of receipt of the decision of disposition.

In the ROSPATENT, the request for restoration of right shall be submitted within 12 months, together with the reasons and fee.

In the Kyrgyzpatent and IP VIETNAM, the rights cannot be restored.

(4) Amendments of the application documents on the applicant's own initiative

(i) Time of amendment on its own initiative

In the four offices, amendments of the application documents on the applicant's own initiative are allowed with different timing.

In the CNIPA, the time of the amendment shall be earlier than first examination, and the time limit shall be set, such as at the time a substance request for examination or within the time limit of three months after the receipt of the notification of the entry into examination as to substance.

In the Kyrgyzpatent, until an examination decision is made, the applicant may amendment on his own initiative.

In the ROSPATENT, after receiving the search report, the applicant has the right to submit once, on its own initiative.

In the IP VIETNAM, the applicant may amend documents of the application on his own initiative before a notice of refusal or a decision to grant a patent has been issued by IP VIETNAM

(ii) Contents of amendment on its own initiative

In the four offices, amendments of the claims, description and drawings are allowed.

(iii) Scope of amendment on its own initiative

In the CNIPA, amendment of the description, scope of claims or drawings attached to an application should be made within the scope of the matters described in the description, scope of claims or drawings originally attached to the application. Amendment shall be directly and unambiguously derivable from the disclosure of the invention as filed.

In the Kyrgyzpatent, amendments of the claims, description and drawings should not change maintenance.

In the ROSPATENT, submission of additional materials (claims and / or descriptions) should not change the application in essence. Additional materials change the application for the invention in essence in one of the following cases, if they contain:

Other invention that does not meet the requirement of unity of invention in relation to the invention or group of inventions contained in the original application, or other useful model;

Features that are subject to inclusion in the claims of the invention or utility model and were not disclosed in the application documents submitted on the date of filing of the application;

An indication of a technical result that is provided by an invention or utility model and is not related to the technical result contained in the same

documents.

In the IP VIETNAM, the amendment must not expand beyond the contents disclosed in the specification as originally filed (in other words, no (new) subject matter may be disclosed by such an amendment which is not derivable directly and unambiguously from the original application by a person skilled in the art).

(5) Formal examination

In all the four offices, the formal examination of an application is to determine whether or not the form of those documents is obviously not in conformity with the provisions of the patent law and regulations.

In the CNIPA, formal examination includes whether or not the application contains the documents required by the patent law, whether or not the form of those documents is obviously not in conformity with the provisions of regulations, and whether or not the other formalities and documents relating to the application are in conformity with the provisions of the patent law and regulations. As for amendments for the alteration, addition or deletion of few words or marks, as well as the amendments to the obvious mistakes in the title of the invention or the abstract, the examiner may carry out ex officio and inform the applicant.

(6) Publication

(i) Time of publication

In the CNIPA, Kyrgyzpatent and ROSPATENT, If the application is confirmed to meet the requirements of patent Law or rule after preliminary examination, it shall be published as soon as possible after the expiry of a period of eighteen months from the date of filing(from the earliest priority date).

In the IP VIETNAM:

An invention registration application shall be published in the nineteenth month from the date of priority or the filing date in case the application has no date of priority or within two months after it is accepted as a valid application, whichever is later;

An invention registration application under the Patent Cooperation Treaty shall be published within two months from the date it is accepted as a valid application and enters the national phase;

An invention registration application containing a request for earlier publication shall be published within two months from the date the IP VIETNAM receives that request or the date it is accepted as a valid application, whichever is later.

(ii) Early publication

In all the four offices, the application may be published earlier at the request of the applicant. The detailed requests are as follow:

Requests \ Offices	CNIPA	Kyrgyzpatent	ROSPATENT	IP VIETNAM
Request form	Yes	Yes	Yes	Yes
Reason	No	No	No	No
Fee	No	Yes	Yes	No

(7) Substantive examination

In the four offices, the substantive examinations are conducted. The examiner shall examine on the basis of the written documents submitted by the applicant. The Office Action (including the Notification to Make Rectification) and the result of examination shall be sent in written form to notify the applicant.

For communication methods in substantive examination, details are as follow:

Methods \ Offices	CNIPA	Kyrgyzpatent	ROSPATENT	IP VIETNAM
Written opinion	Yes	Yes	Yes	Yes
Interview	Optional	No	Yes	Optional
Telephone	Optional	No	Yes	Optional
On spot investigation	Optional	No	No	No
Email	No	Yes	No	Optional
Video Interview	No	No	No	No

(8) Time limit

(i) Time limits in the examination

Legal Time Limit

The legal time limit means the time limit in the related Patent Law and its Implementing Regulations for an applicant (or patentee), or any other person concerned to make a response or perform a certain act. In this report there are four legal time limit:

A: Making a priority claim under the Paris Convention;

B: For a domestic priority claim;

C: Filing a request for the substantive examination of a patent application;

D: Filing a request for a trial against an examiner's decision of refusal;

Offices Time limit	CNIPA	Kyrgyzpatent	ROSPATENT	IP VIETNAM
A	12 months	12 months	12 months	12 months
B	12 months	12 months	12 months	12 months
C	3 years	1 year	3 years	42 months
D	3months	2months	7 months	3 months

Designated Time Limit

The designated time limit may be determined by each Office or the examiner according to actual needs. In this report there are three designed time limit:

E: The period of related to the formality examination, for e.g. deficiencies to be corrected are merely formal or merely of a minor character;

F: The applicant to response to the first Office Action.

G: The applicant to response to the followed Office Action.

Offices Time limit	CNIPA	Kyrgyzpatent	ROSPATENT	IP VIETNAM
E	1 month	2 months	3 months	2 months
F	4 months	2 months	3/6 months	3 months
G	2 months	2 months	3months	3 months

In the ROSPATENT, the deadline for applicant's response to first office action is 3 months if the applicant requests examination; If the applicant receives a decision which states that the object of the application is not patentable, the deadline for applicant's response is 6 months.

(ii) Extension of Time Limit

Legal Time Limit

In the CNIPA and IP VIETNAM, the legal time limit cannot be extended.

In the Kyrgyzpatent and ROSPATENT, the legal time limit can be extended.

Designated Time Limit

In all the four offices, the designated time limit can be extended.

In the CNIPA, where the extension of time limit is requested, the request for extension of time limit, with the reasons explained, shall be submitted and the fee for requesting the extension shall be paid before the expiration of the time limit.

In the ROSPATENT, the deadline for applicant's response to first office action is 3 months if the applicant requests examination; this time period can be extended. If the applicant receives a decision which states that the object of the application is not patentable, the deadline for applicant's response is 6 months; this time period cannot be extended.

The deadline for applicant's response to the following Office Action is 3 months; this time period can be extended

(9) Maintenance and termination of patent right

(i) Time limit of patent right

In all the four offices, the time limit of patent shall be twenty years from the date of filling of the application.

(ii) Conditions of termination of patent right

In all the four offices, in the following conditions, the patent right terminates: expiration of patent right and failing to pay patent fees. Other conditions are as follow:

In the CNIPA and Kyrgyzpatent, the patent right terminates with the abandonment of patent right, invalidation or cancellation of the patent right.

In the IP VIETNAM, the patent right terminates with abandonment of patent right, invalidation of the patent right.

2. Special Procedure Rules

(1) Conversions into other forms of applications

A patent application could be converted into other forms of application. For example, a patent application could be converted into utility model application, if the legislation of the state provides this kind of protective right.

(i) The utility model right protection

All the four offices provide the utility model right protection.

(ii) Conversion

In the Kyrgyzpatent, ROSPATENT and IP VIETNAM, an invention patent application could be converted into utility model application.

(2) Patent Term Extension

In IP VIETNAM, the patent term extension cannot be extended.

In the CNIPA, Kyrgyzpatent and ROSPATENT, the patent term extension can be extended in some conditions.

According to the latest revised Patent Law in China (implemented on June 1, 2021), the following two situations can be compensated:

Where an invention patent application has been granted four years from the date of application and three years from the date of the request for substantive examination, the patent administration department of the State Council shall, at the request of the patentee, grant patent term compensation for the unreasonable delay in the process of granting the patent, except for unreasonable delay caused by the applicant.

In order to compensate the time taken for the review and approval before the

marketing of new drugs, the patent administration department of the State Council shall, at the request of the patentee, grant patent term compensation for the new drug related invention patents that have obtained marketing authorization in China. The compensation term shall not exceed five years, and the total effective patent term after the new drug is approved for marketing shall not exceed 14 years.

(3) Accelerated examination

(i) Accelerated examination service

In the CNIPA and Kyrgyzpatent, there are accelerated examination services. China's accelerated examination is implemented in accordance with the Administrative Measures for Priority Examination of Patent Applications (effective on August 1st, 2017).

In the ROSPATENT, the accelerated examination service is only for PPH.

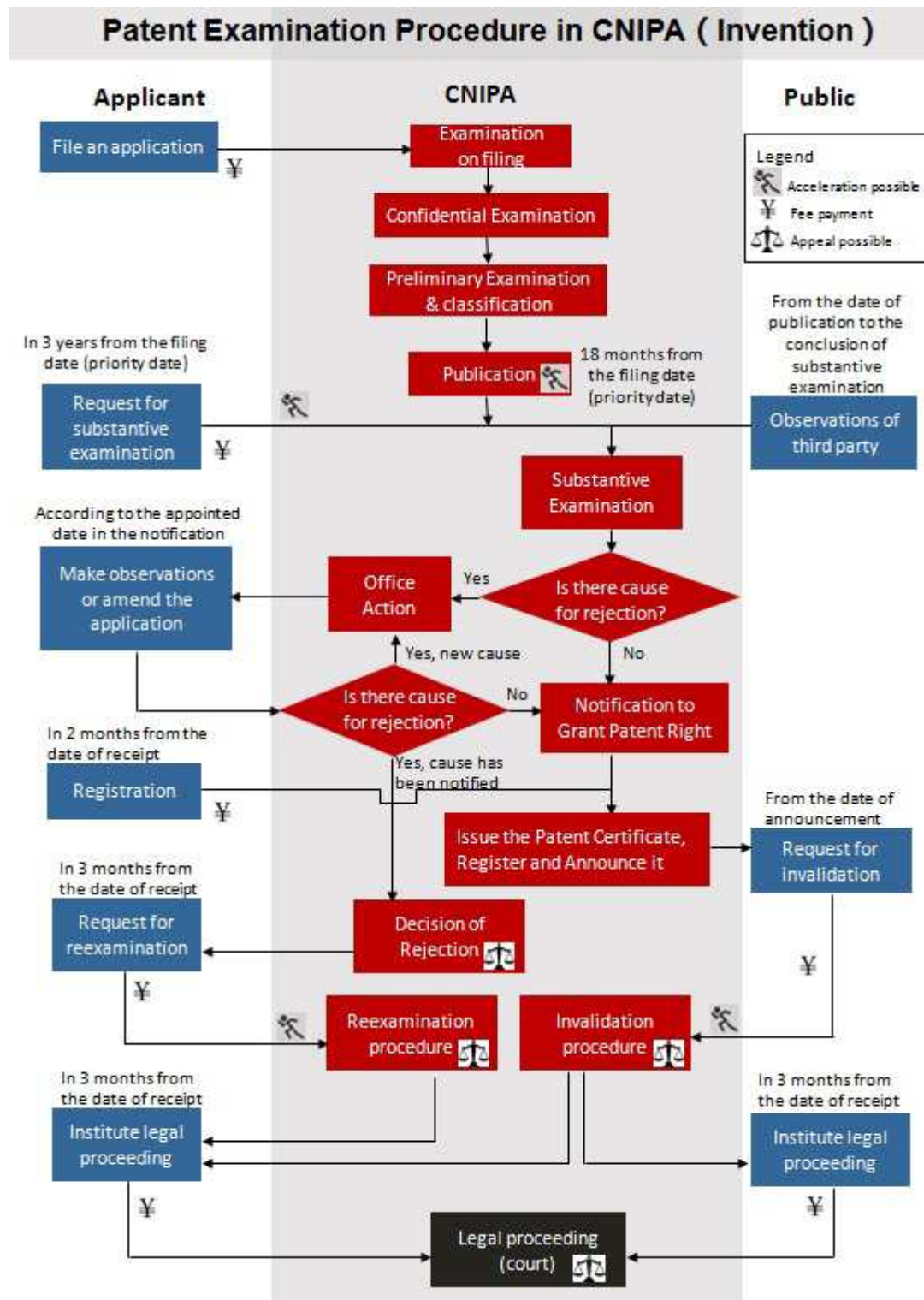
In the IP VIETNAM, there is no accelerated examination service except PPH programs between the IP VIETNAM and other offices.

(ii) Conditions of Accelerated examination

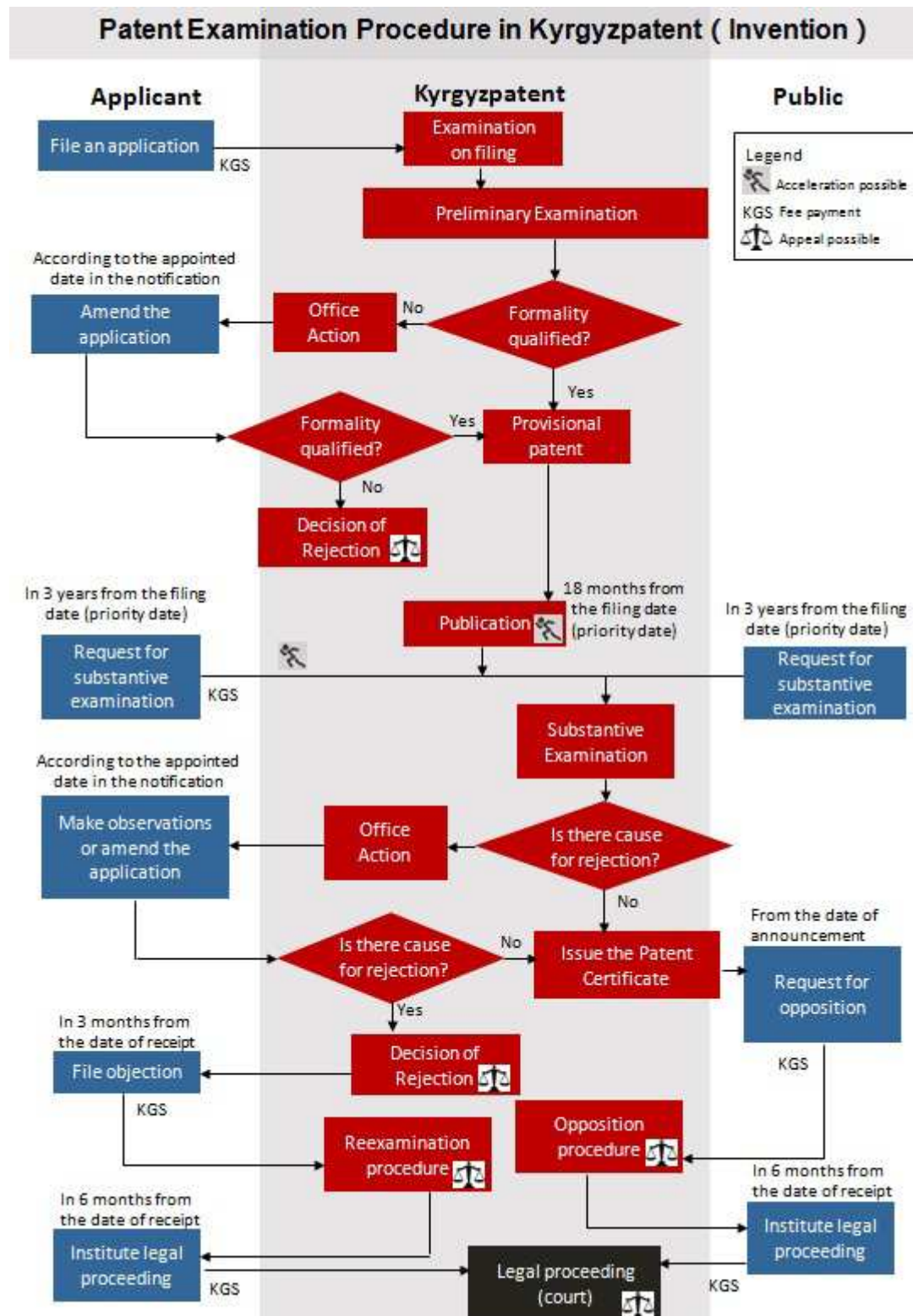
Offices Conditions	CNIPA	Kyrgyzpatent	ROSPATENT (PPH)	IP VIETNAM (PPH)
Request form	Yes	Yes	Yes	Yes
reasons	Yes	No	No	No
Prior art documents	Yes	Yes	Yes	Yes
Fee	No	Yes	No	No

3. Flowchart of the examination procedure

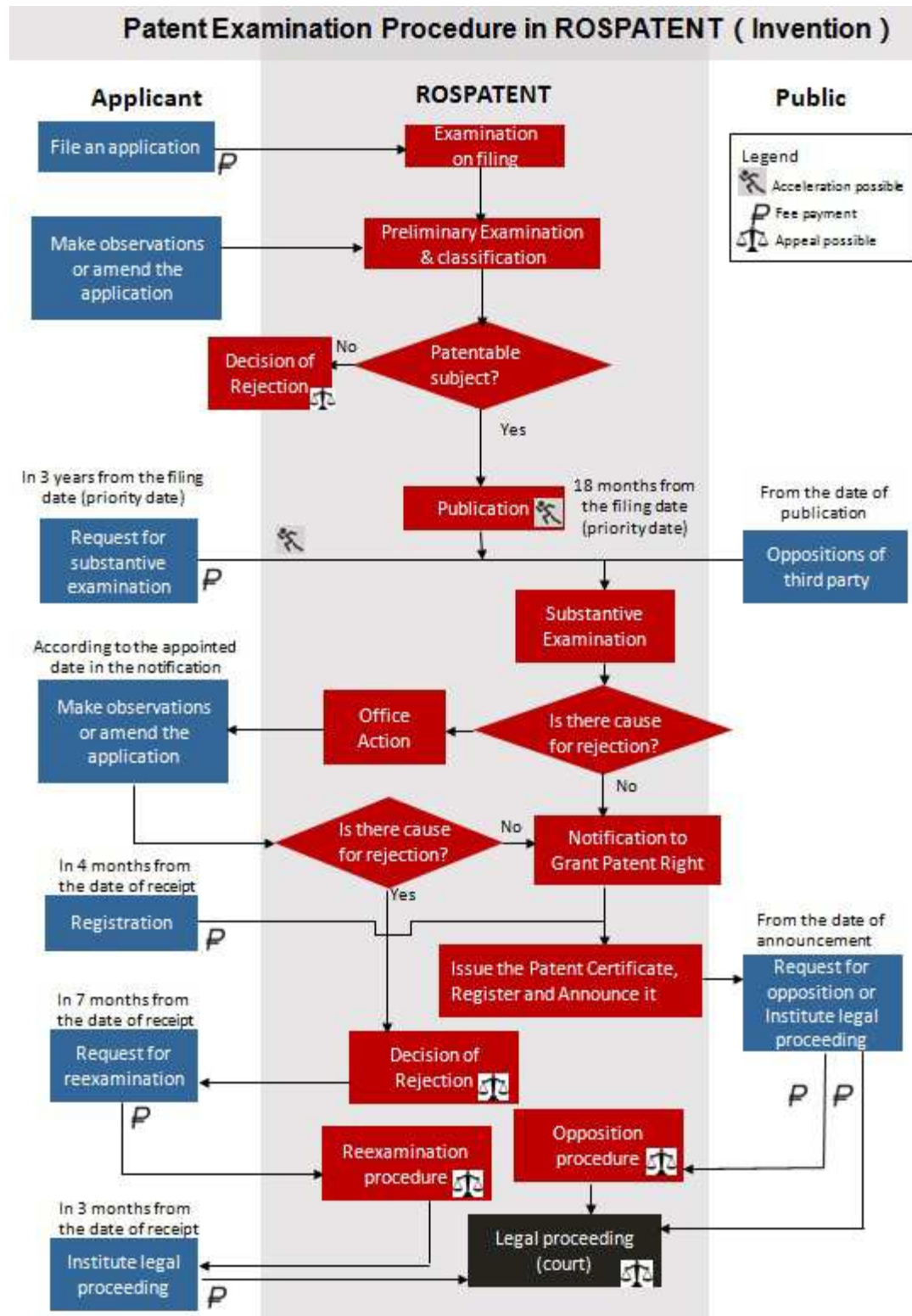
The CNIPA:



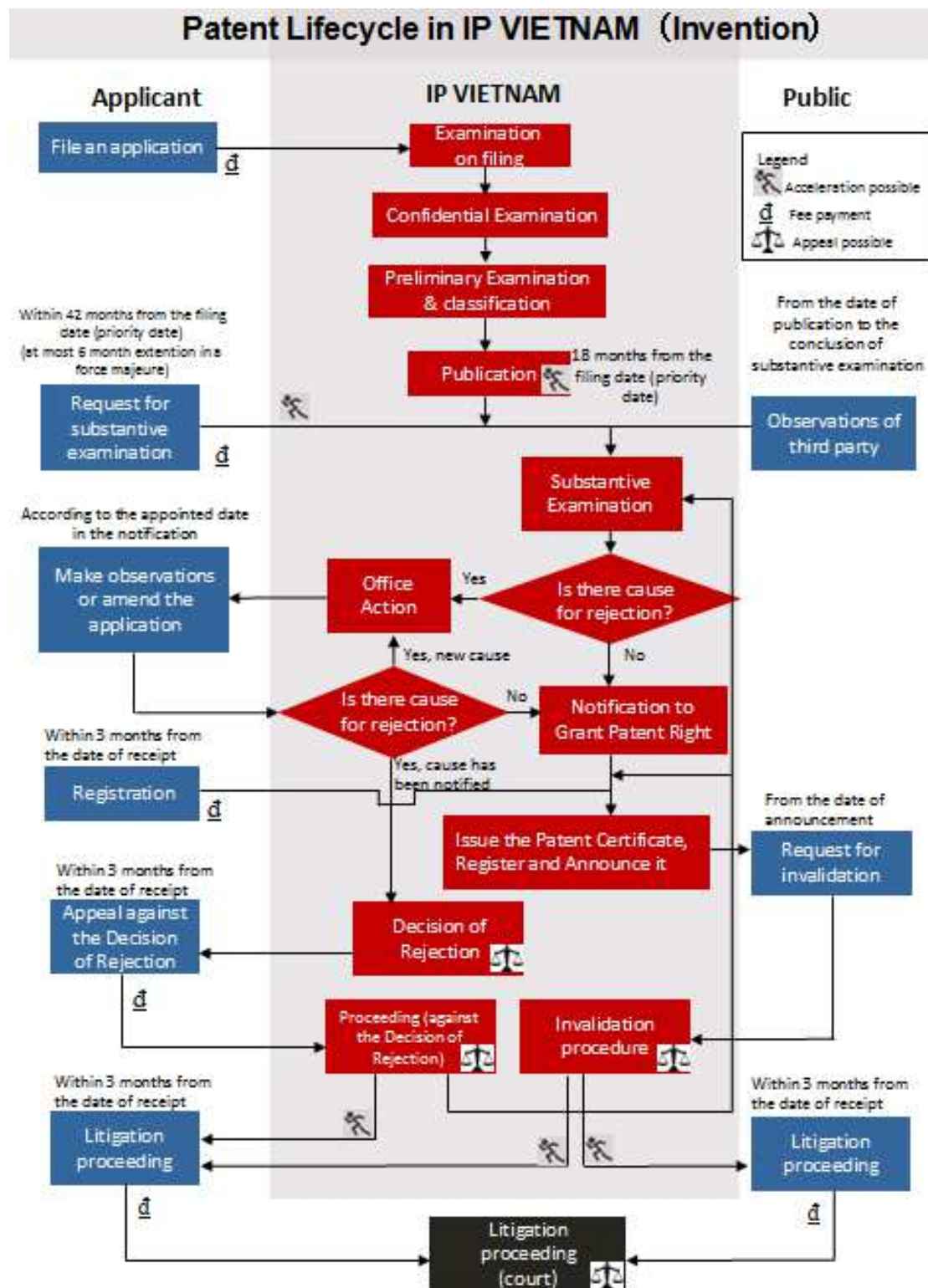
The Kyrgyzpatent:



The ROSPATENT:



The IP VIETNAM:



Annex.

Questionnaire for Comparative Study on Examination Procedures of Patents

1. General Procedure Rules

Q1-1. Documents submitted by applicant	
The application documents must include:	
Request:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Optional
Claims:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Optional
Description:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Optional
Drawings:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Optional
Abstract:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Optional
Abstract drawings:	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Optional
Other requirements:	
Q1-2. Withdraw and restoration	
Q1-2-1 An applicant may withdraw his/her patent application at anytime as long as the patent application is pending at the Patent Office.	
Answer:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Q1-2-2 If the applicant fails to make any response within the specified time limit, the application shall be deemed to have been withdrawn.	
Answer:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Q1-2-3 Where a time limit prescribed in the law is not observed by a party concerned because of force majeure, resulting in loss of his or its rights, he or it may, within the specified time from the date on which the impediment is removed, request to restore his or its rights.	
Answer:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Q1-2-4 Requirements of the restoration of right	
Request:	<input type="checkbox"/> Yes <input type="checkbox"/> No

Reasons (Supporting Documents): <input type="checkbox"/> Yes <input type="checkbox"/> No Fees: <input type="checkbox"/> Yes <input type="checkbox"/> No Time limit: <input type="checkbox"/> Yes <input type="checkbox"/> No (Within _____)
Q1-2-5 Where a time limit prescribed in the law is not observed by a party concerned because of any other justified reason, resulting in loss of his or its rights, he or it may, within the prescribed period of time, request to restore his or its rights.
Answer: <input type="checkbox"/> Yes <input type="checkbox"/> No
Q1-2-6 Requirements of the restoration of right
Request: <input type="checkbox"/> Yes <input type="checkbox"/> No Reasons (Supporting Documents): <input type="checkbox"/> Yes <input type="checkbox"/> No Fees: <input type="checkbox"/> Yes <input type="checkbox"/> No Time limit: <input type="checkbox"/> Yes <input type="checkbox"/> No (Within _____)
Q1-3. Amendments of the application documents on the applicant's own initiative
Answer: <input type="checkbox"/> Yes <input type="checkbox"/> No
Q1-3-1 Time of amendment on his own initiative
Answer:
Q1-3-2 Contents of amendment on his own initiative
Answer:
Q1-3-3 Scope of amendment on his own initiative
Answer:
Q1-4 Formal examination
Answer: <input type="checkbox"/> Yes <input type="checkbox"/> No
Q1-5 Publication
Answer: <input type="checkbox"/> Yes <input type="checkbox"/> No
Q1-5-1 Time of Publication

Answer:
Q1-5-2 Early publication
Answer: <input type="checkbox"/> Yes <input type="checkbox"/> No
Q1-5-3 Requirements of early publication
Request: <input type="checkbox"/> Yes <input type="checkbox"/> No
Reasons: <input type="checkbox"/> Yes <input type="checkbox"/> No
Fees: <input type="checkbox"/> Yes <input type="checkbox"/> No
Q1-6 Substantive examination
Answer: <input type="checkbox"/> Yes <input type="checkbox"/> No
Q1-6-1 Communication
Means of communication
Written opinion: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Optional
Interview: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Optional
Telephone: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Optional
On spot investigation: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Optional
Email: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Optional
Video Interview: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Optional
Q1-7 Time limit
Q1-7-1 Legal Time Limit
The legal time limit means the time limit in the related Patent Law and its Implementing Regulations for an applicant (or patentee), or any other person concerned to make a response or perform a certain act.
Making a priority claim under the Paris Convention, within _____ from the filing of the first application;
For a domestic priority claim, the priority should be claimed within _____ from the filing of the earlier application.
Filing a request for the examination of a patent application, within _____ from the application's filing date
Filing a request for a trial against an examiner's decision of refusal, within _____

from the date on which the certified copy of the examiner's decision of refusal has been served.

Q1-7-2 Extension of legal Time Limit

Answer: Yes No

Q1-7-3 Designated Time Limit

The designated time limit may be determined by each Office or the examiner according to actual needs.

Within _____, time limit of the period of related to the formality examination, for e.g.: If deficiencies to be corrected are merely formal or merely of a minor character;

Within _____, the applicant to response to the first Office Action;

Within _____, the applicant to response to the following Office Action;

Q1-7-4 Extension of designated Time Limit

Answer: Yes No

Q1-8-1 Maintenance and termination of patent right

The time limit of patent shall be _____ from the date of filling of the application.

Q1-8-2 Conditions of termination of patent right

Answer:

2. Specific Procedure Rules

Q2-1. Conversions into other forms of applications

Q2-1-1 The patent office also provides the utility model right protection.

Answer: Yes No

Q2-1-2. An invention patent application could be converted into utility model application

Answer: Yes No

Q2-2. Patent Term Extension

Answer:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Q2-3-1. Accelerated examination		
Answer:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Q2-3-2 Requirements of accelerated examination		
Request form:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Reasons:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Prior art documents:	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Fees:	<input type="checkbox"/> Yes	<input type="checkbox"/> No