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Patent Attorney Ordinance (PatAO)

of 11 May 2011 (Status as of 1 January 2013)

The Swiss Federal Council,

based on Article 6 paragraphs 2 and 3, Article 7 paragraph 2, Article 8 paragraph 1, Article 9 paragraph 3 and Article 12 paragraph 3 of the Patent Attorney Act of 20 March 2009¹ (PatAA),

ordains:

Chapter 1: Subject Matter

Art. 1

This Ordinance regulates:

- a. the requirements to be fulfilled by a higher education qualification in natural sciences or engineering (Art. 2 let. a PatAA);
- b. the Swiss Federal Patent Attorney Examination and the recognition of foreign patent attorney examinations (Art. 6–8 PatAA);
- c. the requirements concerning practical training and the recognition of professional experience acquired abroad (Art. 9 PatAA);
- d. the Patent Attorney Register (Art. 11–15 PatAA).

Chapter 2: Higher Education Qualifications

Art. 2

¹ A higher education qualification in natural sciences or engineering must be obtained by completing a full-time study course with a minimum duration of three years or a part-time study course of equivalent study duration. A minimum of 80 percent of the course hours required to obtain this qualification must be devoted to natural sciences or engineering subjects.

² The following subjects in particular are considered natural sciences or engineering subjects: civil engineering, biochemistry, biology, biotechnology, chemistry, electronics, electrical engineering, information technology, mechanical engineering, mathematics, medicine, pharmacy and physics.

Chapter 3: Swiss Federal Patent Attorney Examination

Section 1: Organisation of the Examination

Art. 3 Examination Board

¹ The Federal Council assigns to the joint association (Examination Board) of the Association of Swiss and European Patent Attorneys in Private Practice (VESPA), the Association of Patent Attorneys in Swiss Industry (VIPS) and the Association of Swiss Patent and Trademark Attorneys (ASPTA) the following duties:

- a. administration of the Swiss Federal Patent Attorney Examination.
- b. issuing guidelines for the Patent Attorney Examination.
- c. appointment of examiners.
- d. deciding on the passing or failing of the examination.
- e. deciding on the recognition of foreign patent attorney examinations.
- f. establishing fee regulations and submitting them to the Federal Council for approval.
- g. maintenance of an office.

² The Examination Board is financed by the fees levied for its rulings and services and by contributions from its members.

³ The duties of the Examination Board are performed by the Examination Committee.

Art. 4 Examination Committee

¹ The Examination Committee consists of two representatives each of the VESPA, VIPS and ASPTA patent attorney associations. They are elected by the Executive Board of the Examination Board.

² The Examination Committee is quorate when the chair or his or her deputy and at least three other members are present.

³ The decisions of the Examination Committee are reached by a majority of the members present. The chair also has a vote; where a vote is tied, his or her vote or, where he or she is absent, the vote of his or her deputy, shall be decisive.

⁴ The President of the Federal Patent Court or a legal member of this court designated by the President shall attend the meetings of the Examination Committee as an observer in an advisory capacity. The Examination Committee may invite other persons without voting rights to the meetings.

Art. 5 Examiners

¹ Patent attorneys registered in the Patent Attorney Register and other experts with proven knowledge in the subject areas to be examined (Art. 7), such as lecturers in higher education, attorneys and judges, shall be appointed by the Examination Committee as examiners.

² Examiners may not simultaneously be members of the Examination Committee.

³ Examiners are appointed for a period of two years. They may be reappointed.

Art. 6 Supervision

¹ Responsibility for the supervision of the Swiss Federal Patent Attorney Examination lies with the State Secretariat Education, Research and Innovation (SERI)².

² SERI approves the Examination Committee's guidelines for the Patent Attorney Examination.

Section 2: Content of the Examination**Art. 7** Examination of specialised knowledge

In the Swiss Federal Patent Attorney Examination, specialised knowledge is examined in the following areas:

- a. European and international patent law;
- b. Swiss patent law;
- c. Swiss procedural and organisational law relevant to industrial property rights;
- d. trade mark, design, copyright, competition and civil law to the extent required for working professionally as a patent attorney in Switzerland.

Art. 8 Parts of the examination

¹ The Swiss Federal Patent Attorney Examination consists of four parts. The candidate is free to decide on the order in which the parts of the examination are completed.

² Parts 1 and 2 (Art. 7 let. a) are conducted in accordance with the provisions of the Administrative Council of the European Patent Organisation (Art. 134a para. 1 let. b of the European Patent Convention of 5 October 1973, revised on 29 November 2000³) on the European qualifying examination for professional representatives before the European Patent Office. They cover the following:

² The name of this administrative unit was amended in application of Art. 16 para. 3 of the Publications Ordinance of 17 Nov. 2004 (SR **170.512.1**) on 1 Jan. 2013. The amendment has been made throughout the text.

³ SR **0.232.142.2**

- a. Part 1: drafting of patent claims and the introductory part of a patent application (Examination Paper A);
 - b. Part 2: replying to an official communication in which prior art has been cited (Examination Paper B).
- ³ Part 3 (Art. 7 let. a–c) covers:
- a. Swiss patent law including the special provisions pertaining to international procedures;
 - b. the Swiss provisions in the area of administrative, criminal and civil procedure as well as the organisation of authorities and court applicable to patent matters.
- ⁴ Part 4 (Art. 7 let. d) covers trade mark, design, copyright, competition and civil law to the extent required for working professionally as a patent attorney in Switzerland.

Section 3: Examination Procedure

Art. 9 Conduct of the examination

- ¹ Parts 3 and 4 of the Swiss Federal Patent Attorney Examination are held at least once a year. If less than four applications have been received, the Examination Committee may postpone the examination, whereby there may be no more than 25 months between two examination dates of any examination part.
- ² The Examination Committee determines the application deadlines, the examination dates and the examination location and publishes these.
- ³ Neither Part 3 nor Part 4 of the examination may be split across more than one examination date.

Art. 10 Admission

- ¹ Admission to the Swiss Federal Patent Attorney Examination shall be granted to:
- a. any person who, on applying to take the examination, can provide proof of the requisite higher education qualification (Art. 2) and of the requisite practical training (Art. 27–30); and
 - b. has paid the examination fee by the application deadline.
- ² Any person who applies for admission to the examination must submit the following:
- a. the documents evidencing his or her higher education qualification;
 - b. a certificate confirming the completion of practical training (Art. 30).
- ³ The Examination Committee may require a candidate, the candidate's institution of higher education or the candidate's supervisor (Art. 28) to provide additional information or proof.

⁴ The Examination Committee shall decide on admission to the examination by issuing a ruling.

Art. 11 Examination language

¹ The candidate may take the examination parts administered by the Examination Committee in German, French or Italian.

² The candidate must indicate the examination language on applying to take the examination.

Art. 12 Parts 1 and 2 of the examination

¹ Parts 1 and 2 must be completed within the framework of the European qualifying examination conducted by the European Patent Office.

² In exceptional circumstances, the Examination Committee may offer substitute examinations that are equivalent to Examination Papers A and B of the European qualifying examination.

Art. 13 Preparation of examination content

¹ The examination questions are prepared by at least two examiners. They establish the marking criteria.

² The examiners must submit the examination questions and the marking criteria to the Examination Committee for approval.

³ The Examination Committee ensures the examination papers are translated into the respective languages for which applications have been received.

Art. 14 Part 3 of the examination

¹ Part 3 of the examination is conducted in writing.

² At least one of the examiners who prepared this part of the examination must be present. He or she advises the candidate on the details pertaining to the conduct of the examination prior to commencement of the examination.

³ This part of the examination shall have a duration of six hours.

⁴ The candidate shall provide the answers to the examination in anonymised form.

⁵ The examiners entrusted with marking the examinations shall determine their assessment jointly.

Art. 15 Part 4 of the examination

¹ Part 4 of the examination is conducted orally.

² Two of the examiners who prepared this part of the examination must be present for Part 4.