

PART 2
PATENTABILITY

Rule 200. *Patentable Inventions.* – Any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable shall be patentable. (Sec. 21, IP CODE)

Rule 201. *Statutory Classes of Invention.* – An invention may be, or may relate to;

- a) a useful machine;
- b) a product;
- c) or process or an improvement of any of the foregoing;
- d) microorganism; and
- e) non-biological and microbiological processes. (Sec. 21, IP CODE)

Rule 202. *Non-Patentable Inventions.* – The following shall be excluded from patent protections:

- (a) Discoveries, scientific theories and mathematical method;
- (b) Schemes, rules and methods of performing mental acts, playing games or doing business, and programs for computers;
- (c) Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body. This provision shall not apply to products and compositions for use in any of these methods;
- (d) Plant varieties or animal breeds or essentially biological process for the production of plants or animals. This provision shall not apply to microorganisms and non-biological and microbiological processes;
- (e) Aesthetic creations; and
- (f) Anything which is contrary to public order or morality. (Sec. 22, IP CODE)

Rule 203. *Novelty.* – An invention shall not be considered new if it forms part of a prior art. (Sec. 23, IP CODE)

Rule 204. *Prior Art.* – Prior art shall consist of: (a) Everything made available to the public by means of a written or oral disclosure, by use, or in any other way, before the filing date or the priority date of the application claiming the invention. Prior use which is not present in the Philippines, even if widespread in a foreign country, cannot form part of the prior art if such prior use is not disclosed in printed documents or in any tangible form.

(b) The whole contents of an application for a patent, utility model, or industrial design registration, published under Sec. 44 of IP CODE, filed or effective in the Philippines, with a filing or priority date that is earlier than the filing or priority date of the application: Provided, That the application which has validly claimed the filing date of an earlier application under Section 31 of IP CODE, shall be prior art with effect as of the filing date of such earlier application: Provided further, That the applicant or the inventor identified in both applications are not one and the same, (Sec. 24, IP CODE):

Where two or more applications are independently filed with respect to the same invention, and the later applications are filed before the first application or earlier application is published, the whole contents of the first or earliest filed application published in accordance with Sec. 44, IP CODE on or after the filing date or priority date of the later filed application shall be novelty destroying with respect to the later filed application.

Rule 205. *Non-Prejudicial Disclosure.* - The disclosure of information contained in the application during the twelve (12) months preceding the filing date or the priority date of the application shall not prejudice the applicant on the ground of lack of novelty if such disclosure was made by:

(a) The Inventor;

(b) A foreign patent office, the Bureau or the Office, and the information was contained (a) in another application filed by the inventor and should not have been disclosed by the office, or (b) in an application filed without the knowledge or consent of the inventor by a third party which obtained the information directly or indirectly from the inventor;

or

(c) A third party which obtained the information directly or indirectly from the inventor. For the purposes of subsection (a) "inventor" also means any person who, at the filing date of application, had the right to the patent. (Sec. 25, IP CODE)

Rule 206. *Inventive Step.* - (a) An invention involves an inventive step if, having regard to prior art, it is not obvious to a "person skilled in the art" at the time of the filing date or priority date of the application claiming the invention. (Sec. 26, IP CODE)

(b) Only prior art made available to the public before the filing date or priority date shall be considered in assessing inventive step.

Rule 207. *Person Skilled in the Art.* - The person skilled in the art is presumed to be an ordinary practitioner aware of what was common general knowledge in the art at the relevant date. He is presumed to have knowledge of all references that are sufficiently related to one another and to the pertinent art and to have knowledge of all arts reasonably pertinent to the particular problems with which the inventor was involved. He is presumed also to have had at his disposal the normal means and capacity for routine work and experimentation.

Rule 208. *Industrial Applicability.* - An invention which can be produced and used in any industry shall be industrially applicable. (Sec. 27, IP CODE)