

**Circular of the General Affairs Office of SIPO**  
**Concerning the Printing and Distribution of**  
***Special Action Plan for Patent Enforcement***  
***Operations in the Field of E-business***

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The intellectual property offices of all provinces, autonomous regions, municipalities directly under the Central Government, and Xinjiang Production and Construction Corps; the intellectual property offices of all cities which have set up the intellectual property rights-defense aid center,

In order to thoroughly carry out the work plan of the State Council's special campaign against IP infringements, fully implement the spirit of the National Conference of the Heads of Intellectual Property Offices, effectively curb and crack down on patent infringements and counterfeiting in the field of e-business, explore the establishment of a long-term mechanism for patent protection in the field of e-business, the SIPO decides to organize and wage a special campaign of patent enforcement and rights defense in the field of e-business. *Special Action Plan for Patent Enforcement Operations in the Field of E-business* (hereinafter referred to as "Special Action Plan") is hereby issued for you to follow and carry out carefully.

Local intellectual property offices must pay great attention to the work, strengthen leadership, clarify responsibilities, rapidly deploy the special campaign locally, guarantee the full implementation of the Work Program, and create together a reassuring e-business environment for the right owners, the innovators, the investors and the vast consumers to promote the steady and healthy development of e-business in China.

This Circular is hereby given.

May 15, 2014



## Special Action Plan for Patent Enforcement Operations in the Field of E-business

In order to thoroughly carry out the work plan of the State Council's campaign against IP infringements, strengthen patent protection in the field of e-business, build a great market environment, and promote the healthy development of e-business in China, the SIPO decides to wage a special campaign of patent enforcement and rights defense in the field of e-business.

### I. Objectives

Through the special campaign, establish a mechanism that features rapid reactions, rapid strikes and rapid coordination for cracking down on patent infringements and counterfeiting in the field of e-business; build a network with clear division of responsibilities, highlighted priorities and coordination and linkages; explore to improve the long-term effective mechanism for patent enforcement and rights defense in the field of e-business; effectively curb and crack down on patent infringements and counterfeiting in the field of e-business; and create reassuring e-business environment for the right owners, the innovators, the investors and the consumers.

### II. Work Division

i. The State Intellectual Property Office shall be responsible for advancing the establishment and promotion of the work mechanism of special campaign for patent enforcement and rights defense in the field of e-business; supervising the handling of major cases with complex circumstances and national influences; guiding, promoting and supporting local intel-

lectual property offices and IP rights-defense aid centers (hereinafter referred to as "rights-defense centers") to carry out special enforcement and rights-defense campaigns.

ii. The IP offices of all provinces, autonomous regions and municipalities directly under the Central Government shall be responsible for organizing patent enforcement and rights-defense campaigns in the field of e-business in their respective administrative areas.

Local intellectual property offices with the enforcement function shall be responsible for mediating and handling disputes over patent infringements where the respondent is a local online shop runner; organizing the medication and handling of disputes over patent infringements on the e-business platforms in their respective administrative areas; investigating the behavior of passing off patents where the respondent is a local online shop runner or that happens on the local e-business trading platforms.

iii. The rights-defense centers in areas where the e-business trading platforms are located shall be responsible for coordinating with the e-business trading platforms on related patent enforcement matters, establishing a communication mechanism, and even stationing to the e-business trading platforms to give on-the-spot guidance. Each and every rights-defense center shall also be responsible for receiving related reports of offenses or complaints, giving advice on judging patent infringements, and timely

transferring the materials of reports and complaints to the IP office in the locality where the respondent is located or where the e-business trading platform is located.

Local intellectual property offices shall require the e-business trading platforms to timely delete or shield commodities infringing another party's intellectual property or websites containing counterfeited patents, or shut the online shops when necessary.

### III. Working Style

i. Rapidly delete or shield links to the infringing products against obvious infringements.

Local intellectual property offices shall guide the e-business trading platforms in their respective administrative areas to build an internal mechanism for supervising patent protection, and strengthen professional training in patent protection. When it involves obvious patent infringements, the e-business trading platform shall delete or shield websites containing suspected infringing commodities according to the contractual stipulation between the e-business trading platform and online shop runners.

ii. Delete or shield links to the infringing products as soon as possible according to the opinion letter on the judgment of patent infringement or, should there be complicated patent infringements, contact related rights-defense centers to issue an opinion letter on patent infringement confirmation and consultation.

The rights-defense centers where the e-business trading platforms are headquartered, those having set up regional confirmation and consultation centers for patent infringement and those having set up industry confirmation and consultation centers for patent infringement shall do the work of patent infringement

confirmation and consultation actively and effectively. The rights-defense centers shall timely issue the opinion letter on patent infringement confirmation and consultation based on the materials provided by the e-business trading platform. The e-business trading platform shall decide whether to delete or shield related links or not according to the opinion letter on patent infringement confirmation and consultation. The e-business trading platform is encouraged and supported to submit the handling process and results to the competent local intellectual property office.

Where the e-business trading platform requests the rights-defense center to issue an opinion letter on patent infringement confirmation and consultation, it shall submit related case materials, mainly (1) the identities, addresses, ways of contact and websites of the complainant and the respondent; (2) related information on the patent involved in the case; (3) comparison materials on the commodities suspected of infringement in the online shop that is complained against and the scope of protection of the patent involved in the case; (4) defending materials of the respondent or an indication of it if the respondent fails to submit any defending materials. The rights-defense center shall check and verify the complaint materials submitted by the e-business trading center and, if such complaint materials are found to be eligible, organize relevant experts to issue the opinion letter on patent infringement confirmation and consultation.

iii. Timely delete or shield links to the infringing products, or close the online shop concerned according to the mediation paper or the punishment decision.

In case the complainant refuses to accept the



punishment decision after the complaint is concluded according to the aforesaid rapid processing modes in (ii), the case shall be processed in accordance with the procedures for handling general patent infringements. For eligible reports, complaints and requests for investigation and handling in the field of e-business, local intellectual property offices shall timely place them on file for investigation and handling as soon as possible. For cases where the infringement facts are tenable and a penalty decision has been made, local intellectual property offices shall notify the e-business trading platform to timely delete or shield the links or close the online shops concerned.

Local intellectual property offices shall combine online supervision with offline supervision, strengthen the reverse tracing of infringement clues, and go deeper to the source of production. Clues to the source of the infringing products, provided by the infringing online shop, shall be given to the complainant, along with the general procedures for lodging an investigation and handling request against offline infringing behaviors at the local intellectual property office having the jurisdiction. In case the complainant requests the local intellectual property office to investigate and handle both online and offline infringing behaviors, the related local intellectual property office shall follow the legal procedures to place the case on file and timely handle it.

For group patent infringements involving many places, they may be transferred by the intellectual property office where the e-business platform is located to the local intellectual property offices, or the regional patent enforcement coordination and control center may give some opinions, recommend a local intellectual property office with the jurisdiction to first

ascertain if the accused products are indeed infringing, and notify the e-business trading platform to timely delete or shield links and close the online shop concerned. For disputes over group patent infringements with national influences in the field of e-business, the local intellectual property offices may submit the cases to the SIPO for supervision.

iv. Investigating and handling patent pass-off in the field of e-business

When the commodities sold by related online shops obviously involve passing off patents, the e-business trading platform concerned may take measures such as deleting or shielding related web pages containing the suspected infringing commodities or closing the online shops concerned according to the agreement between the e-business platform and online shop runners; and submit the case to the local intellectual property office having the jurisdiction for investigation and handling.

Should patent pass off, which happens on the e-business trading platform, is with complicated circumstances, thus cannot be ascertained by the e-business trading platform as patent pass off, the e-business trading platform shall timely submit the case to the local intellectual property office for investigation and handling; or report it to the local rights-defense center which then transfers it to the intellectual property office where the online shop runner first got registered for investigation and handling.

After getting the clues to patent pass off from the e-business trading platform or the rights-defense center, the local intellectual property office shall, after ascertaining the fact of violation of law, issue a notice to order a rectification or a punishment decision

as soon as possible within the statutory period, and shall timely notify the e-business trading platform to delete or shield links to the commodities using passing off patents. Patent pass off that violates the criminal law shall be timely transferred to the public security authority.

For major patent pass off with national influences or serious circumstances in the field of e-business, the local intellectual property office may submit the case to the SIPO for supervision.

#### IV. Requirements

i. Effectively implement responsibilities. All the local intellectual property offices are required to take the task as one of the most significant measures to carry out the deployment of the work to strengthen intellectual property protection by the State Council; and pay great attention to it. All the local intellectual property offices shall build a special campaign responsibility system, and actively contact the local e-business trading platforms to speed up the building of a mechanism for improving patent enforcement, rights defense and supervision in the field of e-business. The persons in charge of the local intellectual property offices at different levels shall be the persons responsible; major persons in charge of law enforcement departments and offices and of the rights-defense centers shall be the coordinators; and persons shall be specifically appointed for corresponding liaison and information reporting and delivery work so as to concretely carry out work responsibilities, and handle cases actively, rapidly and regularly.

ii. Intensify support and incentive. Local intellectual property offices shall intensify the support of and increase the investment in the special campaign of

patent enforcement and rights defense in the field of e-business; build and improve the incentive mechanism for case handling. The SIPO will strengthen support of and incentive to outstanding units in the special campaign and people who actively report infringements and passing off.

iii. Strengthen innovation and coordination. When handling cases of patent delinquencies on the e-business trading platform, local intellectual property offices shall give full play to the advantage, of being simple and fast, of administrative enforcement and rights-defense, be good at innovating and improving performance; timely place the cases transferred to them on file, conclude the cases as soon as possible, and strengthen coordination and mutual support; and strengthen information exchange and sharing, fully mobilize the technical forces and professional advantages of the public security authorities, propaganda departments, media and e-business trading platform, build an interdepartmental joint action system to achieve rapid rights defense.

iv. Strengthen supervision and examination. Local intellectual property offices shall timely enter related case information into the national system for submitting and reporting patent enforcement cases. The SIPO examines the work launched by local intellectual property offices on a regular basis; integrates the work into the annual enforcement and rights-defense performance evaluation system; and requires the local intellectual property offices unable to actively perform their duties to carry out rectification.

v. Intensify promotion and education. Local intellectual property offices are required to vigorously publicize local special campaign programs and measures



in mainstream local newspapers, websites and other media; timely promote the achievements made in cracking down on patent infringements and counterfeiting in the field of e-business, and raise public awareness of intellectual property protection in the field of e-business.

#### **V. Scheduling**

##### **i. Deployment (Before May 30, 2014)**

Intellectual property offices of all provinces, autonomous regions, municipalities directly under the Central Government, and urban intellectual property offices having set up the rights-defense center shall timely make public, in major local media like newspapers and websites, the person in charge and the contact of the special campaigns, the local reporting and complaint hotline and the specific work program. The rest municipal intellectual property offices shall release the above information as required by the provincial intellectual property offices. Training and mobilization on patent enforcement and rights defense in the field of e-business shall be organized and launched.

##### **ii. Implementation (June through November, 2014)**

During the special campaign, local intellectual property offices shall make full use of mechanisms and resources of all kinds; focus on intensifying case handling in the field of e-business; timely discover and transfer clues; and handle cases quickly and in a coordinated manner.

The intellectual property offices of all provinces, autonomous regions, municipalities directly under the Central Government shall positively perform the duty of organization, guidance and supervision. Intellectual property offices and rights-defense centers in provinces and cities with developed e-business shall explore actively and effectively, and play the leading role. Rights-defense centers shall truly play their role in supporting the conformation and consultation of patent infringements and rapid mediation of patent disputes. The "12330" platform shall play a comprehensive role in helping offense reporting and complaints.

Efforts have to be made to guide the e-business trading platforms to speed up the building of an internal supervision mechanism for patent rights defense; encourage intellectual property rights-defense volunteers to fully play the role of supervision and service; and accelerate the establishment and improvement of a pool of patent infringement confirmation and consultation experts.

##### **iii. Summarization (December 2014)**

The intellectual property offices of the provinces, autonomous regions, municipalities directly under the Central Government shall submit the summary of the special campaign to the SIPO before December 10. The summary shall highlight case handling, contain full and accurate data, and give explicit opinions and suggestions on how to establish a lasting effective mechanism.