

Announcements & Circulars

Order of the State Intellectual Property Office

(No. 60)

The Measures for Patent Administrative Law Enforcement, which have been deliberated and adopted at the executive meeting of the State Intellectual Property Office, are hereby promulgated and shall come into force as of February 1, 2011.

Commissioner

December 29, 2010

Measures for Patent Administrative Law Enforcement

Chapter I General Provisions

Article 1 For purpose of regulating patent administrative law enforcement acts, protecting the legitimate rights and interests of patentees and the general public and maintaining the order of the socialist market economy, these Measures are formulated in accordance with the *Patent Law of the People's Republic of China*, the *Implementing Regulations of the Patent Law of the People's Republic of China* and other relevant laws and regulations.

Article 2 These Measures shall apply to the

patent administrative law enforcement, namely dealing with patent infringement disputes, mediating patent disputes and investigating and punishing the acts of passing off patents by the administrative authority for patent affairs.

Article 3 The administrative authority for patent affairs shall take facts as the basis and law as the yardstick and follow the principle of impartiality and timeliness when dealing with patent infringement disputes.



When mediating patent disputes, the administrative authority for patent affairs shall, according to the principle of voluntariness and legitimacy, urge the parties concerned to understand each other and reach a mediation agreement on the basis of ascertaining facts and distinguishing the right from the wrong.

When investigating and punishing acts of passing off patents, the administrative authority for patent affairs shall take the facts as the basis, law as the yardstick, follow the principle of impartiality and timeliness and impose administrative punishments in correspondence with the facts, nature, circumstances and extent of social harm of the violations of law.

Article 4 The administrative authority for patent affairs shall set up a special agency or assign full-time law enforcers to carry out the patent administrative law enforcement.

The case handling personnel shall have a patent administrative law enforcement certificate issued by the State Intellectual Property Office or the people's government of the province, autonomous region or municipality directly under the Central Government, and wear formal dress when performing official duties.

Article 5 For any case of patent infringement dispute or passing-off that has significant impacts, the State Intellectual Property Office may, if necessary, organize relevant administrative authority for patent affairs to investigate and deal with it and impose corresponding punishments.

For any major case involving two or more provinces, autonomous regions or municipalities under the Central Government, the administrative authority for patent affairs of the pertinent provinces, autonomous

regions or municipalities directly under the Central Government may report to and request the State Intellectual Property Office to coordinate in the handling or investigation and punishment of it.

Where the administrative authority for patent affairs meets any difficulty during the patent administrative law enforcement, the State Intellectual Property Office shall render necessary guidance and support.

Article 6 The administrative authority for patent affairs may, according to the local actualities, authorize the administrative authority for patent affairs established by the people's government at the city or county level with practical capacity to investigate and punish the acts of passing off patents and mediate patent disputes.

The authorizing party shall supervise and direct the authorized party's investigation and handling of counterfeit patents and mediation of patent disputes, and bear the legal liabilities.

Article 7 Where a case handling person designated by the administrative authority for patent affairs has any direct interest in any party concerned, he shall recuse himself, and any party concerned has the right to apply for disqualifying him from the case. If a party applies for disqualifying him from the case, it shall state the reasons.

The disqualification of a case handling person shall be decided by the person-in-charge of the administrative authority for patent affairs. Prior to making a decision of approval or disapproval of disqualification, the person who is requested for disqualification shall refrain from participating in the work on the aforesaid case.

Chapter II Handling of Patent Infringement Disputes

Article 8 The following requirements shall be met for anyone that files petition with the administrative authority for patent affairs for the handling of patent infringement disputes:

1. The petitioner is the patentee or an interested party;
2. There is a definite party against whom the petition is filed;
3. There are express claims and detailed facts and reasons;
4. The case falls under the scope of acceptance of cases and jurisdiction of the administrative authority for patent affairs which receives the case; and
5. The party concerned has not lodged any lawsuit with the people's court in respect of the patent infringement dispute.

The term "interested party" as mentioned in item 1 includes the licensees of any patent exploitation license contract and the legitimate heir of the patentee. Of the licensees of the license contracts for exploitation of patents, the licensee of a sole license contract may separately file a petition; the licensee of an exclusive license contract may separately file a petition provided that the patentee does not file any petition; no licensee of an ordinary license contract may separately file a petition unless it is otherwise stipulated in the contract.

Article 9 To petition the administrative authority for patent affairs to handle a patent infringement dispute, the petitioner shall submit a petition and the following supporting materials:

1. a certificate of the legal status of the petitioner, namely the resident identity card or any other valid identity certificate where the petitioner is an individual, or a duplicate of the valid business license or any other certification document which can certify the legal status of the petitioner as well as the identity certificate of the legal representative or major person-in-charge of the petitioner where the petitioner is an entity; and
2. a certificate proving the validity of the patent, namely a duplicate of the patent register book, or the patent certificate and the receipt of payment for the annual patent fee for the current year.

If the patent infringement dispute involves a patent of utility model or design, the administrative authority for patent affairs may require the petitioner to present a patent evaluation report issued by the State Intellectual Property Office (Search Report for Utility Models).

The petitioner shall provide as many duplicates of the petition and the relevant evidence as the number of parties against whom the petition is filed.

Article 10 A petition shall specify

1. the name and address of the petitioner, and the name and title of the legal representative or major person-in-charge or, in the case of an authorized agent, the name of the agent and the name and address of the agency;
2. the name and address of the party against whom the petition is filed; and
3. the claims, facts and reasons.

The relevant evidence and supporting materials



may be submitted in the form of attachments to the petition.

The petition shall bear the signature or seal of the petitioner.

Article 11 Where a petition meets the requirements as described in Article 8 of the Measures, the administrative authority for patent affairs shall place the case on file and notify the petitioner thereof within 5 working days as of the date of receipt of the petition, and in the mean time designate 3 or more (in odd number) persons to deal with the patent infringement dispute. Where a petition fails to meet the requirements as described in Article 8 of the Measures, the administrative authority for patent affairs shall notify the petitioner that the petition is not accepted within 5 working days as of the date of receipt of the petition and make due explanations.

Article 12 The administrative authority for patent affairs shall, within 5 working days as of the date on which the case is placed on file, provide the duplicates of the petition and the attachments thereto to the party against whom the petition is filed, and require it to submit its defense and provide as many duplicates of its defense as the number of petitioners within 15 days as of the date of receipt thereof. Where the party against whom the petition is filed fails to submit its defense within the time limit, the handling of the case by the administrative authority for patent affairs will not be affected.

If the party against whom the petition is filed submits its defense, the administrative authority for patent affairs shall provide a duplicate of the defense to the petitioner within 5 working days as of the date of receipt thereof.

Article 13 When the administrative authority for patent affairs handles a patent infringement dispute, it may mediate the case according to the will of the parties concerned. If both parties concerned reach an agreement, the administrative authority for patent affairs shall prepare a mediation agreement, affix its official seal to it and have it signed or sealed by both parties. If the mediation fails, it shall timely make a decision of handling.

Article 14 When the administrative authority for patent affairs handles any patent infringement dispute, it may decide whether to try the case orally if the circumstance so requires. If it decides to try the case orally, it shall, at least 3 working days prior to the oral trial, notify the parties concerned of the time and place of the oral trial. Any party refuses to appear without any justifiable reason or withdraws during the oral trial without permission shall be deemed to have withdrawn the petition where the said party is the petitioner or deemed to have been absent where it is the party against whom the petition is filed.

Article 15 To try a case orally, the administrative authority for patent affairs shall include in the transcripts the information of the participants and main points of the oral trial, and shall have them signed or sealed by the case handling persons and attendees if no error is found upon verification.

Article 16 The provision of Paragraph 1, Article 59 of the Patent Law that “the scope of protection of the patent right for an invention or utility model shall be determined by the terms of the claims” means that the scope of protection of a patent shall be determined by the technical features described in the claims, including the scope determined by the fea-

tures equivalent to the technical features described therein. The equivalent features refer to the features which use substantially the same means, perform substantially the same functions and produce substantially the same effects as the technical features described in the claims, and which can be contemplated by an ordinary technician in the corresponding technical field without any creative work.

Article 17 Unless a mediation agreement is reached or the petitioner withdraws the petition, the administrative authority for patent affairs shall prepare a decision about the handling of the patent infringement dispute, which shall state;

1. the name and address of the parties concerned;
2. the facts and reasons stated by the parties concerned;
3. the reasons and basis for determining whether the infringement is established;
4. identify the type, object and range of infringement which the party, against whom the petition is filed, is ordered to stop promptly if the decision of handling determines that the infringement is established and that it is necessary to order the infringer to stop the infringement promptly; or a rejection of the claims of the petitioner if the decision of handling determines that the infringement is not established; and
5. means to lodge an administrative lawsuit if any

party is not satisfied with the decision of handling and the time limit for doing so.

The decision of handling shall bear the official seal of the administrative authority for patent affairs.

Article 18 Where after the administrative authority for patent affairs or the people's court makes a decision of handling or judgment which determines that the infringement is established and orders the infringer to stop the infringement promptly, the party against whom the petition is filed commits the same type of infringement upon the same patent, and the patentee or the interested party petitions the case to be handled, the administrative authority for patent affairs may directly make a decision of handling that orders immediate stop of the infringement.

Article 19 To handle patent infringement disputes, the administrative authority for patent affairs shall conclude a case within 4 months as of the date on which the case is placed on file. If it is necessary to extend the time limit for an extremely complicated case, it shall be subject to the approval of the person-in-charge of the administrative authority for patent affairs. The extension approved shall under no circumstance exceed 1 month.

The case handling time limit as mentioned in the preceding paragraph does not include the time for announcement, assessment, suspension, etc. during the process of handling a case.

Chapter III Mediation of Patent Disputes

Article 20 To petition the administrative authority for patent affairs to mediate a patent dispute, a petitioner shall submit a petition.

A petition shall specify:

1. the name and address of the petitioner and the name and title of the legal representative or major per-



son-in-charge or, in the case of an authorized agent, the name of the agent and the name and address of the agency;

2. the name and address of the party against whom the petition is filed; and

3. the specific claims and reasons for mediation.

To petition solely for mediation of the amount of patent infringement damage compensation, the petitioner shall submit a duplicate of the decision of handling issued by the administrative authority for patent affairs, which determines that the infringement is established.

Article 21 After the administrative authority for patent affairs receives a petition, it shall, by mail, direct delivery or any other means, timely serve the duplicates of the petition on the party against whom the petition is filed, and require it to submit a statement of opinion within 15 days as of the date of receipt thereof.

Article 22 If the party against whom the petition is filed submits a statement of opinion and consents to mediation, the administrative authority for patent affairs shall timely place the case on file and notify the petitioner and the party against whom the petition is filed of the time and place of mediation.

If the party against whom the petition is filed fails to submit a statement of opinion or expresses its rejection to mediation in the statement, the administrative authority for patent affairs shall not place the case on file and notify the petitioner.

Article 23 To mediate any patent dispute, the

administrative authority for patent affairs shall invite the relevant entities or individuals to assist it. The entities or individuals invited shall offer assistance in mediation.

Article 24 If the parties concerned reach an agreement upon mediation, the administrative authority for patent affairs shall prepare a mediation agreement, affix to it its official seal, and have the signature or seal of both parties affixed thereto. If no agreement is reached, the administrative authority for patent affairs may conclude the case by revoking it and notify both parties.

Article 25 To petition for the mediation of a dispute over the right to apply for a patent or the ownership of a patent, the party concerned may, with the notice of acceptance of the case issued by the administrative authority for patent affairs, request the State Intellectual Property Office to suspend the relevant procedures for the patent application or the patent right.

If an agreement is reached upon mediation, the parties concerned shall go through the resumption procedures at the State Intellectual Property Office with the mediation agreement. If no agreement is reached, the parties concerned shall go through the resumption procedures at the State Intellectual Property Office with the case revocation notice issued by the administrative authority for patent affairs. If no extension request is filed after the lapse of 1 full year as of the date of request for suspension, the State Intellectual Property Office shall resume the relevant procedures on its own initiative.

Chapter IV Investigation and Handling of Acts of Passing off Patents

Article 26 Where the administrative authority for patent affairs finds a suspected act of passing off patents by itself or through report by others, it shall timely place the case on file and designate 2 or more case handling persons to investigate it.

Article 27 The investigation and handling of an act of passing off patents shall be subject to the jurisdiction of the administrative authority for patent affairs of the place where the said act of passing off patents is committed.

If there is any dispute over jurisdiction between or among the administrative authorities for patent affairs, the administrative authority for patent affairs of their common higher-level people's government shall have jurisdiction; if there is no such administrative authority for patent affairs, the State Intellectual Property Office shall designate the jurisdiction.

Article 28 To seal up or detain any suspected counterfeit patent products, the administrative authority for patent affairs shall obtain the approval of its person-in-charge. It shall issue a relevant notice to the party concerned at the time of sealing up and detaining the suspected counterfeit patent products.

When sealing up and detaining the suspected counterfeit patent products, the administrative authority for patent affairs shall check the amount on the spot, prepare transcripts and a checklist and have them signed or sealed by the party concerned and the case handling persons. If the party concerned refuses to sign or affix its seal to the said transcripts or checklist, the case handling person shall state so in the

transcripts. The party concerned shall be given a copy of the checklist.

Article 29 After the end of investigation of a case, the case shall, upon approval of the person-in-charge of the administrative authority for patent affairs, be handled as follows based on the circumstances:

1. If the act of passing off a patent is established and shall be punished, an administrative punishment shall be imposed according to law;
2. If the act of passing off a patent is minor and has already been corrected in time, no punishment will be imposed;
3. If the act of passing off a patent is not established, the case shall be revoked according to law; or
4. If any crime is constituted, the case shall be transferred to the public security organ.

Article 30 Before the administrative authority for patent affairs makes a decision of administrative punishment, it shall inform the party concerned about the facts, reasons and the basis for the decision of punishment, as well as the rights to whom it is entitled according to law.

Before the administrative authority for patent affairs makes a decision of a large sum of penalty, it shall inform the party concerned of the right to hold a hearing. If the party concerned requests a hearing, the administrative authority for patent affairs shall organize one according to law.

Article 31 A party concerned has the rights to make a statement and defend itself. The administra-



tive authority for patent affairs shall not give an aggravated administrative punishment on the party concerned because of its defense.

The administrative authority for patent affairs shall verify the facts, reasons and evidence given by the party concerned, and adopt the same if the facts are found to be true and the reasons are justifiable.

Article 32 If the circumstance is complicated or a heavy administrative punishment shall be imposed for a major violation of law, a decision shall be made upon collective discussion of the persons in charge of the administrative authority for patent affairs.

Article 33 Where a punishment shall be imposed for the act of passing off a patent which is found to be established upon investigation, the administrative authority for patent affairs shall make a decision of punishment, stating:

1. the name and address of the party concerned;
2. the evidence, reasons and basis for determining that the act of passing off a patent is established;
3. the contents of punishment, as well as the

manner of execution of punishment; and

4. how to apply for administrative reconsideration and lodge administrative lawsuit if the party concerned is dissatisfied with the decision of punishment, and the time limit for doing so.

The decision of punishment shall bear the official seal of the administrative authority for patent affairs.

Article 34 To investigate and handle a case of patent passing-off, the administrative authority for patent affairs shall conclude the case within 1 month as of the date on which the case is placed on file. If it is necessary to extend the time limit because the case is very complicated, it shall be subject to the approval of the person-in-charge of the administrative authority for patent affairs. The approved extension to the time limit shall under no circumstances exceed 15 days.

The time limit for handling a case as mentioned in the preceding paragraph does not include the time for hearing, announcement, etc. during the process of handling a case.

Chapter V Investigation and Collecting Evidence

Article 35 During the process of handling a patent infringement dispute, if a party concerned is unable to gather some evidence by itself for an objective reason, it may request in written forms with the administrative authority for patent affairs to conduct an investigation and collect evidence. The administrative authority for patent affairs shall decide whether to conduct an investigation and collect relevant evidence according to the relevant circumstance.

During the process of handling a patent infringe-

ment dispute or investigating and handling an act of passing off a patent, the administrative authority for patent affairs may ex officio, if necessary, conduct investigation and collect relevant evidence.

When the law enforcers conduct an investigation and collect relevant evidence, they shall show their law enforcement certificates to the party concerned and the relevant persons. The party concerned and the relevant persons shall render assistance and cooperation and faithfully offer relevant information, and

may not refuse to do so or create obstacles.

Article 36 For the purpose of investigation and evidence collection, the administrative authority for patent affairs may consult and replicate the contracts, account books and other documents relevant to the case, ask the parties concerned and testifiers questions and conduct on-site survey by way of measuring, photographing, making video recording, etc. In the case of a suspected infringement of process patent, the administrative authority for patent affairs may require the party under investigation to make an on-site demonstration.

The administrative authority for patent affairs shall prepare transcripts when conducting an investigation and collecting evidence. The transcripts shall bear the signatures or seals of the case handling persons, as well as the entity or individual under investigation. If the entity or individual under investigation refuses to sign its (his) name on or affix its (his) seal to the said transcripts, the case handling persons shall state so in the transcripts.

Article 37 The administrative authority for patent affairs may conduct an investigation and collect evidence by way of taking samples.

If a product patent is involved, some suspected infringing products may be taken as samples; if a process patent is involved, some samples may be taken from the products which are suspected to be obtained directly via the process. The samples taken shall not exceed such quantity that is enough to prove the facts.

To take samples as evidence, the administrative authority for patent affairs shall make transcripts and a checklist, stating the name, features, quantity and storage place of the samples taken, and have them af-

fixed with the signatures or seals of the case handling persons and the entity or individual under investigation. If the entity or individual under investigation refuses to sign its (his) name or affix its (his) seal to them, the case handling persons shall state so in the transcripts. The entity or individual under investigation shall be given a copy of the checklist.

Article 38 Where any evidence is likely to be lost and hard to be obtained again and it is impossible to take samples as evidence, the administrative authority for patent affairs may register the evidence for keeping and make a decision within 7 days.

No entity or individual under investigation may destroy or move away the evidence already registered for keeping.

The administrative authority for patent affairs shall make transcripts and a checklist of the evidence registered for keeping, stating the name, features, quantity and storage place of the evidence registered for keeping, and have the same affixed with the signatures or seals of the case handling persons as well as the entity or individual under investigation. If the entity or individual under investigation refuses to sign its (his) name on or affix its (his) seal to them, the case handling persons shall state so in the transcripts. The entity or individual under investigation shall be given a copy of the checklist.

Article 39 If the administrative authority for patent affairs needs to commission another administrative authority for patent affairs to assist it in investigation and the collection of evidence, it shall make a clear request. The commissioned department shall provide timely and earnest assistance in investigation and the collection of evidence, and make a reply as



soon as possible.

Article 40 Where in investigating any detained goods which are suspected to be infringing goods, the Customs asks the administrative authority for patent affairs for assistance, the latter shall render assistance

according to the law.

When the administrative authority for patent affairs handles a patent case that involves imported and exported goods, it may ask the Customs for assistance.

Chapter VI Legal Liabilities

Article 41 If the administrative authority for patent affairs determines that a patent infringement is established and makes a decision of handling and order the infringer to promptly stop the infringement, it shall take the following measures to curb the infringement:

1. If the infringer manufactures any patent-infringing products, order it to promptly stop the manufacture, destroy the equipment and mold for manufacturing the infringing products, and not to sell or use any infringing products that have not yet been sold or put them on the market by any other means; if it is difficult to preserve the infringing products, order the infringer to destroy them;

2. If the infringer uses a patented process without the permission of the patentee, order it to stop using the patented process, destroy the equipment and mold for applying the patented process, and not to sell or use any infringing products which are obtained directly through the patented process and have not yet been sold or put them on the market by any other means; if it is difficult to preserve the infringing products, order the infringer to destroy them;

3. If the infringer sells patent infringing products or infringing patents obtained directly through a patented process, order it to stop selling such products

promptly and not to sell or use any infringing products that have not yet been sold or put them on the market by any other means; if it is difficult to preserve the infringing products that have not yet been sold, order the infringer to destroy them;

4. If the infringer offers to sell patent infringing products or infringing products obtained directly through a patented process, order it to stop offering to sell the said products, eliminate the consequence and not to engage in any actual sale of the infringing products;

5. If the infringer imports patent infringing products or products obtained directly through a infringing patented process, order it to stop the import thereof promptly; if the infringing products have entered into China, order it not to sell or to use them or to put them on the market by any other means; if it is difficult to preserve the infringing products, order it to destroy them; if the infringing products have not entered into China yet, may notify the relevant Customs of its decision of handling; or

6. Other necessary measures for stopping the infringement.

Article 42 Where after the administrative authority for patent affairs makes a decision of handling which determines that a patent infringement is estab-

lished and orders the infringer to stop the infringement promptly, the party against whom the petition is filed lodges an administrative lawsuit with the people's court, the execution of the said decision shall not be suspended during the course of litigation.

If notwithstanding the decision of the administrative authority for patent affairs which determines that the infringement is established, the infringer neither files any lawsuit within the time limit therefor nor stops the infringement, the administrative authority for patent affairs may apply to the people's court for compulsory enforcement.

Article 43 If the administrative authority for patent affairs determines that any act of passing off a patent is established, it shall order the actor to take the following corrective measures;

1. If the actor attaches a patent mark to a product which has not been granted a patent or on the package thereof, or continues to attach the patent mark to a product or its package after the patent right is declared invalid or terminated, or attaches the patent number of others to a product or the package thereof without permission, he shall promptly stop such act and eliminate the patent mark on the products that have not yet been sold and the package thereof; if it is hard to eliminate the patent mark on the products, he shall destroy the products or the packages thereof;

2. If the actor sells the products as mentioned in Item 1, he shall stop selling them promptly;

3. If the actor refers to a technology or design which has not been granted a patent right as a patented one in the product descriptions or any other materials, or refers to a patent application as a patent, or uses the patent number of others without permission,

which mislead the general public into taking the said technology or design as a patented one, he shall promptly stop distributing the said materials, destroy the materials that have not yet been distributed, and eliminate the influence;

4. If the actor forges or alters any patent certificate, patent documents or patent application documents, he shall promptly stop doing so, destroy the forged or altered patent certificates, patent documents or patent application documents, and eliminate the effects; or

5. Other necessary corrective measures.

Article 44 Where the administrative authority for patent affairs determines that an act of passing off patent is established and makes a decision of punishment, it shall make an announcement.

Article 45 Where the administrative authority for patent affairs determines that an act of passing off patent is established, it may determine the actor's illegal gains by means as follows:

1. If the actor sells any product by passing off the patent of others, his illegal gains shall be the selling price of the product multiplied by the quantity of the products sold;

2. If the actor concludes a contract by passing off the patent of others, his illegal gains shall be the fees he has charged.

Article 46 Where after the administrative authority for patent affairs makes a decision of punishment, and a party concerned applies for administrative reconsideration or lodges an administrative lawsuit with the people's court, the execution of the said decision shall not be stopped during the process of administrative reconsideration or lawsuit.



Article 47 The actor that passes off any patent shall, within 15 days as of the date of receipt of the decision of punishment, pay to the designated bank the penalty as specified in the said decision of punishment. If he fails to pay the penalty due, he shall pay an additional 3% of the penalty due per day.

Article 48 Where any actor refuses to let the administrative authority for patent affairs perform its

official duties or hinders the same from doing so, the public security organ shall punish him in accordance with the Law of the People's Republic of China on Public Security Administration Punishments. If the circumstance is serious and any crime is constituted, the judicial organ shall prosecute him for criminal liabilities.

Chapter VII Supplementary Provisions

Article 49 The administrative authority for patent affairs may serve the relevant legal documents and materials by mail, direct delivery, leaving at a prescribed place, by announcement, or by other means.

Article 50 The power to interpret these Measures shall remain with the State Intellectual Property

Office.

Article 51 These Measures shall come into force as of February 1, 2011. The Measures for Patent Administrative Law Enforcement promulgated by Order No. 19 of the State Intellectual Property Office on December 27, 2001 shall be abolished simultaneously.

Order of the State Intellectual Property Office

(No. 62)

The Measures for the Record Filing of Patent Exploitation License Contracts, which have been deliberated and adopted at the executive meeting of the State Intellectual Property Office, are hereby promulgated and shall come into force as of August 1, 2011.

Commissioner: Tian Lipu

June 27, 2011