

# English Translation<sup>1</sup> of Administrative Adjudication Measures for Major Patent Infringement Disputes (Draft for Comments)

**Article 1** These Measures are formulated, in accordance with the *Patent Law of the People's Republic of China* (hereinafter referred to as the Patent Law), *Rules for the Implementation of the Patent Law of the People's Republic of China* and relevant laws, regulations and rules, for the purpose of implementing the CPC Central Committee's decisions and plans on comprehensively strengthening the protection of intellectual property rights, earnestly maintaining a market order of fair competition, and protecting the legitimate rights and interests of patentees and the public.

**Article 2** China National Intellectual Property Administration is responsible for the administrative adjudication of patent infringement disputes with significant influence throughout the whole country (hereinafter referred to as major patent infringement disputes) as referred to in Article 70, Paragraph 1 of the Patent Law.

**Article 3** The "major patent infringement disputes" as referred to in these Measures means the patent infringement disputes with any of the following circumstances:

- (1) Involving major public interests;

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**<sup>1</sup> THE USPTO IS PROVIDING THIS TRANSLATION SOLELY AS A CONVENIENCE TO THE ENGLISH-READING PUBLIC. WE HAVE ATTEMPTED TO PROVIDE AN ACCURATE ENGLISH TRANSLATION OF THE CHINESE DOCUMENT, BUT DUE TO THE NUANCES IN TRANSLATING FROM CHINESE TO ENGLISH, SLIGHT DIFFERENCES MAY EXIST. WE WILL MAKE EVERY EFFORT TO CORRECT ERRORS BROUGHT TO OUR ATTENTION.**

- (2) Exerting a major impact on the development of any industry;
- (3) Major cases across different provinces, autonomous regions or municipalities;
- (4) Other major cases that should be subject to administrative adjudication by China National Intellectual Property Administration.

**Article 4** Any request for administrative adjudication of a major patent infringement dispute shall be in line with the circumstances mentioned in Article 3 and the following conditions:

- (1) The claimant is a patentee or an interested party;
- (2) The respondent is clear and definite;
- (3) Claims, specific facts and reasons are clear and definite;
- (4) The party concerned does not bring a suit to the people's court in respect of the patent infringement dispute.

**Article 5** When making a request for administrative adjudication of a major patent infringement dispute, the claimant shall submit a written request and relevant evidentiary materials in accordance with relevant provisions of the *Measures for Administrative Enforcement of Patent*, and submit relevant evidentiary materials that are in conformity with any of the circumstances mentioned in Article 3 issued by the patent administrative department of the province, autonomous region or municipality where the respondent is located or where the infringement is committed.

**Article 6** Where the request meets the conditions specified in Article 4 of these Measures, China National Intellectual Property Administration shall, within 15 working days from the date of receiving the written request, docket the case and notify the claimant, and appoint three or more personnel of odd number to form a collegiate panel to handle the case. Where the case is particularly complicated or any other special circumstance exists, the time limit for docketing the case may be extended by 15 working days upon approval.

Where the request does not meet the conditions specified in Article 4 of these Measures, China National Intellectual Property Administration shall, within 15 working days from the date of receiving the request, notify the claimant of refusing to accept the case and explain reasons to the claimant.

For cases that do not reach the degree of exerting a significant influence throughout the whole country, China National Intellectual Property Administration may transfer them to local patent administrative department with jurisdiction for handling.

**Article 7** China National Intellectual Property Administration may entrust patent administrative department of relevant provinces, autonomous regions and municipalities to handle cases, as required by work.

Regarding the requests for administrative adjudication within their jurisdictions, the patent administrative department of provinces, autonomous regions and municipalities may report and request for administrative adjudication by China National Intellectual Property Administration if they consider that any case is in the circumstance of exerting a significant influence throughout the whole country.

**Article 8** The personnel handling a case shall hold the patent administrative adjudication enforcement certificates issued by China National Intellectual Property Administration. The specific personnel handling a case may be selected from China National Intellectual Property Administration, Patent Office and local patent administrative department. Temporary post or secondment formalities shall be handled in accordance with relevant human resource regulations for the personnel handling a case from patent offices or local patent administrative department.

**Article 9** Where any personnel handling a case has a direct interest relationship with a party concerned, the personnel shall disqualify himself and the party concerned has the right to apply for the personnel to disqualify from the case. Where the party concerned applies for such disqualifying the personnel from the case, he shall explain

relevant reasons. The person chiefly in charge of the authority handling the case shall determine whether the personnel disqualified from the case or not.

**Article 10** China National Intellectual Property Administration shall, within 5 working days from the date of docketing a case, issue a copy of the written request and attachments thereof to the respondent and request him to submit a written pleading within 15 days from the date of receipt and to provide copies of the written pleading in accordance with the number of the claimants. Where the respondent fails to submit a written pleading within the time limit, such failure will not affect the handling of the case.

Where China National Intellectual Property Administration makes an administrative adjudication of a patent infringement dispute upon the request by a patentee or an interested party, the cases infringing upon the same patent right may be dealt with together.

**Article 11** Where the claimant applies for adding new respondents in the process of handling a case, China National Intellectual Property Administration shall make a ruling on approving such addition and notify the other parties if the conditions for joint respondent are met, or refuse the application for such addition and notify the claimant to make such request in a separate case if the conditions for joint respondent are not met while the conditions for the request are met. Where the respondent proposes to add any other party as new respondent, such proposal shall be notified to the claimant. If the claimant agrees with such addition, a ruling shall be made on approving such addition. If the claimant disagrees with such addition, the other party may be added as a third party. The request for adding a respondent or a third party shall be made before the oral hearing, otherwise such request will not be supported.

**Article 12** Where the party concerned cannot collect relevant evidences due to objective reasons, he may request China National Intellectual Property Administration in writing to carry out investigation and collect evidences. China National Intellectual

Property Administration may, upon request, carry out investigation and collect relevant evidences, or it may, on its own initiative, carry out investigation and collect relevant evidences ex officio.

The number of personnel handling a case shall not be less than two in the course of investigation or inspection, and they shall show their certificates to the parties concerned or relevant personnel.

**Article 13** In the course of investigation or inspection, the personnel handling a case may exercise the following functions and powers:

(1) Inquire the parties concerned and other relevant units and individuals, and investigate the circumstances related to the alleged patent infringements;

(2) Conduct on-site inspection of the premises where the parties concerned commit alleged patent infringements;

(3) Inspect products related to alleged patent infringements.

In the course of investigation or inspection, the parties concerned or relevant personnel shall provide assistance and cooperation rather than refusal or obstruction.

China National Intellectual Property Administration may entrust relevant local patent administrative department to carry out relevant investigation of cases, as required by work and according to the actual situation.

**Article 14** Where a patent infringement dispute involves complex technical issues and requires inspection and identification, China National Intellectual Property Administration may, upon the request by the parties concerned, entrust relevant units to carry out inspection and identification. Where the parties concerned request for inspection and identification, the inspection and identification unit may be determined by both parties through consultation. If the consultation fails, the unit shall be designated by China National Intellectual Property Administration. The inspection and identification opinions can be used as the basis of verdict only after going through cross-examination by the parties concerned.

If the parties concerned have an agreement on the identification fee, such agreement shall prevail. In case that such agreement does not exist, the identification fee shall be paid by the party applying for the identification first and then borne by the responsible party when the case is concluded.

**Article 15** China National Intellectual Property Administration may appoint technical investigators to participate in the handling of cases and propose technical investigation opinions. Relevant technical investigation opinions can be used as reference for the collegiate panel to determine technical facts.

Technical investigators may be selected from the technical personnel in relevant fields such as patent examination and reexamination invalidity hearing departments, industrial associations, colleges and universities, scientific research institutions, enterprises and institutions, etc., and specific management measures will be stipulated separately.

**Article 16** China National Intellectual Property Administration shall decide whether to conduct an oral hearing according to the requirements for the fact of the case. If it decides to conduct an oral hearing, the parties concerned shall be informed of the time and place of the oral hearing at least three working days before the oral hearing. Where a party concerned refuses to participate in the oral hearing without justifiable reasons or retreat in the process of the oral hearing without permission, such act will be treated as having withdrawn the request if the party concerned is the claimant or as having been absent if the party concerned is the respondent.

**Article 17** China National Intellectual Property Administration may suspend the handling of a case under any of the following circumstances:

- (1) The respondent applies for declaring the involved patent right invalid and such application is accepted by China National Intellectual Property Administration;
- (2) One party concerned dies and it turns necessary to wait for the successor to indicate whether to participate in the handling;

(3) One party concerned loses capacity for civil conduct and his legal representative has not been determined yet;

(4) The legal person or other organization as one party concerned is terminated and the successor of its rights and obligations has not been determined yet;

(5) One party concerned is unable to participate in the hearing due to force majeure;

(6) The case must be based on the trial result of the other case, but the other case has not been concluded yet;

(7) Other circumstances that require suspending the handling of the case.

China National Intellectual Property Administration may not suspend the handling of a case under any of the following circumstances:

(1) The retrieval report issued by the claimant or the patent evaluation report fails to reveal that the utility model or design patent right has any defect of not meeting the conditions for granting patent right;

(2) A decision on maintaining the validity of the utility model or design patent right has already been made through the invalidation procedure;

(3) The reasons for suspension proposed by the party concerned are obviously not tenable.

**Article 18** China National Intellectual Property Administration may cancel a case under any of the following circumstances:

(1) The case is found not meeting acceptance conditions after docketing;

(2) The claimant withdraws the handling request;

(3) The claimant dies or is cancelled, and he does not have successor or the successor abandons the handling request;

(4) The respondent dies or is cancelled, or there is no person who shall bear obligations;

(5) Other circumstances that require the case to be cancelled according to law.

If relevant patent right is declared invalid during the administrative adjudication, the handling of the case may be terminated. If there is evidence to prove that the decision on declaring the above right invalid has been revoked by the effective administrative judgment, the obligee may make a separate request.

**Article 19** China National Intellectual Property Administration may organize the parties concerned to carry out mediation. Where both parties reach an agreement, China National Intellectual Property Administration shall prepare a mediation agreement and affix its official seal to it, and both parties shall sign or seal the agreement. If the mediation fails, an administrative adjudication shall be made in time.

**Article 20** For any patent infringement dispute handled by China National Intellectual Property Administration, the case shall be concluded within 90 days from the date of docketing. Where the case cannot be concluded within the prescribed time limit due to its complexity or other reasons, the time limit may be extended by 30 days upon approval. Where the case still cannot be concluded after the above-mentioned extension due to its particular complexity or other special circumstances, a reasonable extension period shall be determined if it is decided to grant further extension upon approval.

In the process of handling a case, the time spent for suspension, announcement, inspection and identification, etc. shall not be included in the time limit for concluding the case as mentioned in the preceding paragraph. In case of a request for change or addition of a joint respondent or a third party, the time limit for concluding the case shall be recalculated from the date of changing the request and determination of the joint respondent or the third party.

**Article 21** When making an administrative adjudication, China National Intellectual Property Administration shall prepare a written administrative adjudication and affix its official seal. Where it determines in the administrative adjudication that the patent infringement is established, it shall order the respondent to stop the infringement

immediately, and notify relevant competent authorities and relevant departments of local government to assist in and cooperate with stopping the infringement in a timely manner. If the party concerned refuses to accept the adjudication, he may, within 15 days from the date of receiving the adjudication, bring a suit to the people's court in accordance with the *Administrative Procedure Law of the People's Republic of China*. The enforcement of the administrative adjudication shall not be suspended during the litigation period except for the circumstances prescribed by law. If the respondent neither brings a suit nor stops the infringement within the time limit, the claimant may apply to the people's court for compulsory enforcement.

After an administrative adjudication is made, it shall be made public in accordance with relevant provisions.

**Article 22** Where any personnel handling a case or other staff abuses his power, neglects his duty, engages in malpractice for personal gain or divulges any business secret known in the course of handling the case, the personnel or staff shall be subjected to administrative sanctions according to law if his act does not constitute a crime yet, or transferred to the judicial organ for disposal if he is suspected of having committed a crime.

**Article 23** As for circumstances not stipulated in these Measures, the *Measures for Administrative Enforcement of Patent* and relevant provisions by China National Intellectual Property Administration on the administrative adjudication of patent infringement disputes shall prevail. The specific time limit, examination and approval of disqualification, trial requirements and determination procedures, etc. will be stipulated separately.

**Article 24** China National Intellectual Property Administration shall be responsible for the interpretation of these Measures.

**Article 25** These Measures shall come into force as of June 1<sup>st</sup>, 2021.