

Revised Measures for Patent Enforcement

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Patent owners in China can enforce their rights through two routes: judicial (ie, Chinese courts) and administrative (ie, local intellectual property offices). The current measures for the administrative enforcement of patents came into effect on February 1, 2011. The State Intellectual Property Office revised these measures and the new version of them took effect on July 1, 2015.

Local IP offices, which can be found in many cities all over China, have the power to handle patent infringement disputes, mediate disputes over patent rights, and handle patent passing off cases. The measures provide detailed rules regarding the actions of local IP offices in handling these matters.

An advantage of administrative enforcement of patents is the high speed of the proceedings compared with legal proceedings in courts. The revised measures include provisions providing further improvements to terms of time limits.

Compared with the previous provisions, the revised measures shorten the time limit for concluding a patent infringement dispute. The time limit from instigating to concluding a case was reduced from four to three months. Under exceptional circumstances, extension of this time limit by up to one month is permitted—this provision is maintained in the measures.

According to the revised measures, when a local IP office finds or receives a report or complaint about suspected acts of passing a patent off, it should instigate the case within five working days from the date it finds the suspected acts, or within ten working days from the date it receives the report or complaint, and it should appoint two or more enforcement officers to make investigations.

The revised measures did not change the time limit for a local IP office to conclude a patent passing off case, which is one month from instigation of the case. Similarly, under exceptional circumstances, the time limit can be extended by 15 days. Considering these time limits are very short, it is understandable that any further shortening is extremely difficult and may cause other problems, such as a lack of thorough investigation, deprivation of rights to be heard, and so on.

Where a relevant party requests a local IP office to mediate a patent dispute, it should transmit the request for mediation to the respondent and require it to file observations within 15 days. Once the respondent files observations and agrees to resolve the dispute through mediation, the local IP office should instigate the case within five working days from receiving the observations. The time limit for instigating a mediation case is newly added in the revised measures.

In addition, the revised measures set a time limit for local IP offices to disclose their decisions. Specifically, the measures provide that where a local IP office finds patent infringement and orders the infringer to stop the acts immediately, or where a local IP office finds patent passing off and imposes punishment, it should disclose its decision within 20 working days through channels such as government websites.

The revised measures also include rules that prescribe that local IP offices should swiftly mediate or handle patent infringement disputes or handle acts of patent passing off related to exhibitions or e-commerce platforms.

The revised measures further prescribe that when a local IP office finds patent infringement and orders the infringer to stop the acts immediately, it should order the exhibitors that infringe the patent rights to

withdraw exhibited products, destroy or confiscate relevant promotion materials, replace or cover relevant display boards, and so on.

When a local IP office finds patent infringement on an e-commerce platform, it should instruct the provider of the platform to take timely measures such as deleting, blocking or breaking the links of the relevant web pages of the patent-infringing products or products directly obtained by a patent-infringing process.

When a local IP office finds patent passing off by an exhibition or on an e-commerce platform, it should correspondingly order the exhibitors or the provider of the e-commerce platform to take similar actions.

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