

中国知財ニュース IP NEWS in CHINA

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情報元：[中国法総合オンラインサービス〈Westlaw China〉](#)

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- [1] Decision of the Supreme People's Court on Revising the Several Provisions of the Supreme People's Court on the Application of Law in the Hearing of Cases of Patent Disputes issued

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Proposed Legislation

[1] Decision of the Supreme People's Court on the Amendment to the Regulations of the Supreme People's Court Concerning Applicable Laws for Trialing Patent Dispute Cases adopted

[Supreme People's Court]

...The Decision of the Supreme People's Court on the Amendment to the Regulations of the Supreme People's Court Concerning Applicable Laws for Trialing Patent Dispute Cases was deliberated and passed during a plenary session of the Judicial Committee of the Supreme People's Court convened by chief justice of the Supreme People's Court, ZHOU Qiang, on Jan 19, 2015. Certain clauses of the Regulations of the Supreme People's Court on Matters Concerning Civil Trial Supervision, Retrial and Remand In Pursuance with Applicable Directives were also deliberated during the meeting.

[2] SIPO seeks public opinions on the Revision Draft of the Measures for Patent Administrative Law Enforcement Operations (Draft for Comments)

[State Intellectual Property Office]

...On January 27, the State Intellectual Property Office issued a notice to solicit public opinions on the Revision Draft of the Measures for Patent Administrative Law Enforcement Operations (Draft for

Comments) until March 15, 2015. Major revisions this time include: making clear the emphasis on "strengthening the building of patent administrative law enforcement force, tightening the qualification management of administrative law enforcement officers, and effectively implementing the administrative law enforcement accountability system" (Article 4); requiring that "departments responsible for managing patent work shall strengthen information technology development and information sharing for administrative law enforcement (Article 9), and make explicit provisions on promptly disclosing administrative decisions and publishing law enforcement information (Article 46); further shortening and clarifying relevant time periods for handling patent infringement disputes (Articles 14, 21, 23, 24 and 28); specifying that departments responsible for managing patent work shall strengthen administrative law enforcement in e-commerce fields, mediate and handle patent infringement disputes on e-commerce platforms in an expedited manner, and promptly investigate and punish acts of counterfeiting patents (Article 8); and, explicitly prescribing that departments responsible for managing patent work may notify e-commerce platforms to delete, block or take other measures against web pages containing information on products suspected of infringing upon or counterfeiting patents, so as to stop patent infringement and counterfeiting activities in a timely manner (Articles 43 and 45).

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Adopted Legislation

[1] Decision of the Supreme People's Court on Revising the Several Provisions of the Supreme People's Court on the Application of Law in the Hearing of Cases of Patent Disputes issued

[Chinacourt.org]

...The Decision of the Supreme People's Court on Revising the Several Provisions of the Supreme People's Court on the Application of Law in the Hearing of Cases of Patent Disputes was issued on Jan.29 and shall take effect on Feb 1, 2015.

The revision involves 10 articles, including Article 17 shall be revised to read: for the purpose of Paragraph 1 of Article 59 of the Patent Law, "the scope of protection of an invention patent or utility model patent shall be subject to its claims of rights, and relevant written descriptions and attached drawings may be used to interpret the contents of such claims" shall mean that the scope of protection of a patent shall be subject to the scope determined by all the technical features recorded in the claims of rights, including the scope determined by the features equivalent to such technical features. Equivalent features shall refer to the features that adopt substantially the same means as the technical features recorded to achieve substantially the same functions and effects, and that can be contemplated without creative work by ordinary technical personnel in the relevant field when the accused infringing activities occur."

Article 21 shall be revised to read: where the loss suffered by a patentee or the gains obtained by an infringer are difficult to determine, the competent people's court may, if patent licensing fees can be referred to, reasonably determine the amount of compensation according to factors such as the patent type, the nature and circumstances of the infringement, and the nature, scope and duration of patent licensing, and by referring to a certain multiple of the patent licensing fees; in the absence of any patent licensing fee as reference or where patent licensing fees are manifestly unreasonable, the competent people's court may determine the amount of compensation according to factors such as the patent type, and the nature and circumstances of the infringement, and pursuant to Paragraph 2 of Article 65 of the Patent Law.

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