

**Interpretation of the Supreme People's Court on Several Issues concerning the Application
of Law in the Trial of Patent Infringement Dispute Cases[Effective]**
最高人民法院 关于审理侵犯专利权纠纷案件应用法律若干问题的解释 [现行有效]

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The Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Patent Infringement Dispute Cases was adopted at the 1480th Meeting of the Judicial Committee of the Supreme People's Court on December 21, 2009, and is hereby proclaimed. This Interpretation shall come into force as of January 1, 2010.

December 28, 2009

Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Patent Infringement Dispute Cases

(No. 21 [2009] Judicial Interpretation, adopted at the 1480th Meeting of the Judicial Committee of the Supreme People's Court on December 21, 2009)

For the proper trial of patent infringement dispute cases, this Interpretation is made according to the Patent Law of the People's Republic of China, the Civil Procedural Law of the People's Republic of China and other relevant laws and in consideration of trial practice.

Article 1 The people's court shall, based on the claim asserted by the right holder, determine the scope of protection of a patent in accordance with paragraph 1 of Article 59 of the Patent Law. Where the right holder alters the claim asserted by him before the end of court debate of the first instance, the people's court shall permit such alteration.

Where the right holder asserts that the scope of protection of a patent should be determined according to a dependent claim, the people's court shall determine the scope of protection of the patent according to the additional technical features described in the dependant claim and the technical features described in the claim referred to by it.

Article 2 The people's court shall determine the content of a claim as provided for in paragraph 1 of Article 59 of the Patent Law according to the description of the claim and in consideration of the understanding of the claim by regular technicians in the same field after reading the specification and drawings.

Article 3 The people's court may interpret a claim based on the specification and drawings, relevant claim in the claims, and patent review files. If the specification defines any particular wording of a claim, such particular definition shall apply. If the meaning of a claim cannot be clarified even by the approaches above, the claim may be interpreted according to reference books, textbooks and other public literatures and the common understanding on the part of regular technicians in the same field.

Article 4 For technical features described by function or effect in a claim, the people's court shall determine the content of these technical features according to the specific way of implementation of the functions or effects described in the specification and drawings or an equivalent way of implementation.

Article 5 Where a right holder includes a technical solution, which is described only in the specification or drawings, not in

the claims, in the scope of protection of a patent in a patent infringement dispute case, the people's court shall not support it.

Article 6 Where a right holder includes a technical solution, which the patent applicant or patentee has abandoned through an amendment of claims or specification or through a statement in the patent granting or invalidation procedure, in the scope of protection of a patent in a patent right infringement dispute case, the people's court shall not support it.

Article 7 When determining whether the alleged infringing technical solution falls into the scope of protection of a patent, the people's court shall examine all the technical features described in the claim asserted by a right holder.

Where the alleged infringing technical solution contains technical features identical or equivalent to all the technical features described in a claim, the people's court shall determine that it falls into the scope of protection of the patent; or where, compared with all the technical features described in a claim, the technical features of the alleged infringing technical solution are lack of more than one technical feature as described in the claim or contain more than one technical feature which is neither identical nor equivalent to any technical feature as described in the claim, the people's court shall determine that it does not fall into the scope of protection of the patent.

Article 8 Where a design identical or similar to a design patent is applied to a type of products identical or similar to the products carrying the design patent, the people's court shall determine that the alleged infringing design falls into the scope of protection of a design patent as provided for in paragraph 2 of Article 59 of the Patent Law.

Article 9 The people's court shall determine whether the types of design products are identical or similar according to the use of the products. To determine the use of a product, the people's court may refer to the brief description of the design, the international classification for industrial design, the functions of the product, the sale and real use of the product, and other factors.

Article 10 The people's court shall determine whether designs are identical or similar based on a regular consumer's knowledge and cognitive ability as to a product carrying a design patent.

Article 11 When determining whether designs are identical or similar, the people's court shall consider the design features of the patented design and the alleged infringing design and the overall visual effect of the design to draw an integrative conclusion; and the people's court shall not consider design features which depend on technical functions and material, internal structure and other features of a product which have no effect on the overall visual effect.

In the following circumstances, the overall visual effect of a design is usually more affected:

- (1) The part of a product which can be easily viewed directly in the normal use of the product as opposed to other parts; or
- (2) Technical features of a patented design which are distinct from those of the existing designs as opposed to other design features of the patented design.

Where there is no difference in the overall visual effect between the alleged infringing design and a patented design, the people's court shall determine that the two designs are identical; or if there is no substantive difference in the overall visual effect between them, the people's court shall determine that they are similar.

Article 12 Where a product which infringes an invention or utility model patent is used as a part or component for producing another product, the people's court shall determine it as an act of use as provided for in Article 11 of the Patent Law; and where such another product is sold, the people's court shall determine it as an act of selling as provided for in Article 11 of the Patent Law.

Where a product which infringes a design patent is used as a part or component for producing and selling another product, the people's court shall determine it as an act of selling as provided for in Article 11 of the Patent Law, unless the product which infringes the design patent only has a technical function in such another product.

In the circumstances stated in the above two paragraphs, if the alleged infringers cooperate each other with division of

work, the people's court shall determine it as a joint infringement.

Article 13 The original product acquired by using a patented method shall be determined by a people's court as a product acquired directly in the patented method as provided for in Article 11 of the Patent Law.

The act of acquiring a subsequent product through the further processing or treatment of the above original product shall be determined by the people's court as a use of a product acquired directly in the patented method as provided for in Article 11 of the Patent Law.

Article 14 Where all the technical features which are alleged to fall into the scope of protection of a patent are identical to or are not substantively different from the corresponding technical features of an existing technical solution, the people's court shall determine the technology implemented by the alleged infringer as an existing technology as provided for in Article 62 of the Patent Law.

Where an alleged design is identical to or is not substantively different from an existing design, the people's court shall determine that the design implemented by the alleged infringer is an existing design as provided for in Article 62 of the Patent Law.

Article 15 Where an alleged infringer invokes a defense of rights of prior use of a technology or design acquired illegally, the people's court shall not support it.

In either of the following circumstances, the people's court shall determine that the necessary preparations have been made for manufacturing or use as provided for in item (2) of Article 69 of the Patent Law:

(1) Main technical drawings or process documents necessary for implementing an invention creation have been completed; or

(2) Main equipment or raw materials necessary for implementing an invention creation have been manufactured or purchased.

The original scope as mentioned in item (2) of Article 69 of the Patent Law shall include the scale of production which has existed and the scale of production which can be attained by using or according to the existing production equipment before the patent application date.

Where a holder of prior use rights assigns his technology or design which he has already implemented or for the implementation of which he has made necessary preparations to another person or licenses another person to implement the same after the patent application date, if the alleged infringer argues that such an act of implementation is an act of continued implementation within the original scope, the people's court shall reject such an argument, unless the technology or design is assigned or succeeded to along with the original enterprise.

Article 16 When the people's court determines the benefits which an infringer has acquired from the infringement in accordance with paragraph 1 of Article 65 of the Patent Law, such benefits shall be limited to those acquired by an infringer from the patent infringement; and benefits arising from other rights shall be reasonably deducted.

Where a product which infringes an invention or utility model patent is a part or component of another product, the people's court shall reasonably determine the amount of compensation according to the value of the part or component, its role in the realization of profits from the finished product and other factors.

Where a product which infringes a design patent is a package, the people's court shall reasonably determine the amount of compensation according to the value of the package, its role in the realization of profits from the packaged product and other factors.

Article 17 Where a product or a technical solution for manufacturing a product is known to the public at home and abroad before the patent application date, the people's court shall determine that such a product is not a new product as provided for in paragraph 1 of Article 61 of the Patent Law.

Article 18 Where a right holder gives a warning of patent infringement to another person, the person warned or an

interested person reminds in writing the right holder of exercising his right to sue, the right holder neither withdraws the warning nor files a lawsuit within one month after receipt of the written reminder or within two months after the written reminder is sent, and the person warned or the interested person files a lawsuit with the people's court to request a confirmation of his act as not infringing the patent, the people's court shall accept such a case.

Article 19 Where an alleged patent infringement occurred before October 1, 2009, the people's court shall apply the Patent Law before amendment; or where it occurs after October 1, 2009, the people's court shall apply the Patent Law as amended.

Where an alleged patent infringement occurred before October 1, 2009 and lasts beyond October 1, 2009, and the infringer shall assume the compensatory liability under the Patent Law before amendment and the Patent Law as amended, the people's court shall determine the amount of compensation by applying the Patent Law as amended.

Article 20 For any discrepancy between this Interpretation and the relevant interpretations previously issued by the Supreme People's Court, this Interpretation shall prevail.

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