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二零二零年七月二十七日

中国北京市东城区东交民巷 27 号
中华人民共和国最高人民法院

电子邮件信箱: spcip1@163.com

**主题: 《最高人民法院关于涉网络知识产权侵权纠纷有关法律适用问题的
批复》(征求意见稿)的反馈意见**

致最高人民法院:

美国知识产权所有人协会(下称“IPO 协会”)感谢中华人民共和国最高人民法院(下称“最高院”)提供了对 2020 年 6 月 10 日发布的《最高人民法院关于涉网络知识产权侵权纠纷 有关法律适用问题的批复》(公开征求意见稿)(下称“《批复》”)提交意见的机会。

IPO 协会是一家代表各行业、各技术领域内拥有知识产权或相关权益的公司和个人的国际性行业协会。它拥有一百七十五家公司会员以及超过一万两千多名个人会员。这些个人会员有些从属于公司会员或律所成员,有些是发明人、作者或律师会员。IPO 协会的会员遍及三十多个国家。

IPO 协会提倡有效和实惠的知识产权,为会员提供广泛的服务,包括支持会员在立法和国际事务中的利益、分析当前知识产权问题、提供教育和信息服务、以及向公众传播知识产权的重要性。

感谢最高人民法院应地方法院的要求澄清在线知识产权侵权纠纷有关问题。该正式答复,以及最高人民法院关于审理涉及电子商务平台的知识产权纠纷的指导意见(以下简称“指导意见”),将有助于在采取措施保护知识产权权利人和当事人通过电子商务平台开展业务方面提供更大的一致性。

以下是我们对《批复》的具体反馈意见。

作为一般性评论，我们注意到官方答复中的原则和主题与 2020 年 6 月 10 日发布的《指导意见》存在重叠。如果两份文件之间存在重叠和不一致之处，我们谨建议提供更多具体细节的《指导意见》优先。

第 2 条

第 2 条解决了互联网服务提供商和电子商务平台的运营商在收到知识产权所有者依法发出的通知后的责任。为了防止轻率诉讼行为，IPO 建议应以有力的证据支持这种通知，如下所示：

网络服务提供者、电子商务平台经营者收到知识产权权利人依法发出的通知和有力的证据后，未及时采取删除、屏蔽、断开链接等必要措施的，应当对损害的扩大部分与网络用户或者电子商务平台内经营者承担连带责任。

第 4 条

第四条规定，在将非侵权声明转发给权利人之后“合理时间内”未收到投诉或诉讼通知的，互联网服务提供商或电子商务平台运营商应终止及时采取现有措施。所谓的“合理期限”通常会引起争议，并且我们注意到，《指导意见》第 11 条也处理了相同的原则。为了保护有关各方的权利并与《指导意见》保持一致，我们建议以下内容：

网络服务提供者、电子商务平台经营者在转送声明到达权利人后的合理期限 25 个工作日内，未收到权利人已经投诉或者提起诉讼通知的，应当及时终止所采取的措施。

第 5 条

由于 (i) 指导意见的第 10 条 (“第 10 条”) 和正式答复的第 5 条 (“第 5 条”) 均针对恶意声明者，(ii) 第 10 条提供了在确定声明人的陈述是否恶意时可能考虑到的因素；及 (iii) 为了促进第 10 条与第 5 条之间的一致性，谨提出将第 10 条列举的因素纳入第 5 条如下：

由《最高人民法院关于审判涉及电子商务平台的知识产权纠纷的指导意见》第十条所列的因素来决定提交恶意声明导致网络服务提供者、电子商务平台经营者终止措施，造成知识产权权利人损害扩大的，人民法院可以根据知识产权权利人的请求，加重恶意声明人对损害扩大部分的赔偿责任。

第6条

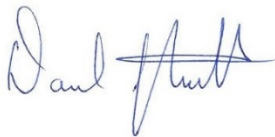
第6条涉及正式答复对未决案件的适用性。谨此提出，澄清案件的最后审理是否已经“结束”的时机。IPO建议进行以下修订：

本批复作出时判决尚未发布终审的案件，适用本批复；本批复作出时判决已经终审发布，当事人申请再审或者按照审判监督程序决定再审的案件，不适用本批复。

IPO协会再次感谢贵院给予此次机会提出反馈意见。我们也非常愿意与贵院进一步交流或能有机会为贵院提供更多的信息。

随信附上本信的翻译版本。

此致



Daniel J. Staudt
美国知识产权所有人协会主席

附件：IPO协会对《最高人民法院关于涉网络知识产权侵权纠纷有关法律适用问题的批复》（征求意见稿）的反馈意见（英文版）



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GlaxoSmithKline
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Gillian Thackray
Thermo Fisher Scientific
Joerg Thomaier
Bayer Intellectual Property GmbH
Mark Wadzyk
Qualcomm, Inc.
Stuart Watt
Amgen, Inc.
Ariana Woods
Capital One

27 July 2020

Supreme People's Court
27 Jiaomin Alley
Dongcheng District
Beijing, P.R.China

VIA EMAIL: spcip2020@163.com

Re: Official Reply from the Supreme People's Court on the Application of Law in Disputes Involving Online Intellectual Property Rights Infringement

To the Supreme People's Court:

The Intellectual Property Owners Association (IPO) wishes to thank the Supreme People's Court (hereinafter referred to as the "SPC") for the opportunity to respond to the request for comments on the draft "*Official Reply from the Supreme People's Court on the Application of Law in Disputes Involving Online Intellectual Property Rights Infringement*" (hereinafter referred to as the "Official Reply") published on 10 June 2020.

IPO is an international trade association representing companies and individuals in all industries and fields of technology who own, or are interested in, intellectual property rights. IPO's membership includes 175 companies and close to 12,000 individuals who are involved in the association either through their companies or as inventor, author, law firm, or attorney members. IPO membership spans over 30 countries.

IPO advocates for effective and affordable IP ownership rights and offers a wide array of services, including supporting member interests relating to legislative and international issues; analyzing current IP issues; providing information and educational services; and disseminating information to the public on the importance of IP rights.

We appreciate the SPC's issuance of clarifications in response to requests by local courts concerning disputes over online infringements of intellectual property rights. The Official Reply, along with the *Guiding Opinions of the Supreme People's Court on the Trial of Intellectual Property Disputes Involving E-Commerce Platform* ("Guiding Opinions"), will help provide greater consistency in the application of measures to protect IP rights holders and parties conducting business via e-commerce platforms.

We provide below our comments on the Official Reply.

General Counsel
Jeffrey Kochian
Akin Gump Strauss Hauer & Feld
LLP

As a general comment, we noticed that the Official Reply includes provisions that overlap in principle and subject matter with the Guiding Opinions also issued on 10 June 2020. To the extent there is overlap and inconsistency between the two documents, we respectfully recommend that the Guiding Opinions, which provide greater specificity, take precedence.

Article 2

Article 2 addresses liability of the internet service provider and the operator of the e-commerce platform after receiving the notice given in accordance with the law by an owner of an intellectual property right. In order to prevent frivolous actions, IPO suggests that such notice should be supported with substantiating evidence, as shown below:

*After receiving the notice given in accordance with the law **with substantiating evidence** by an intellectual property right owner, if the internet service provider and the operator of the e-commerce platform fail to take necessary measures to delete, or block, or disable relevant links, it shall be jointly and severally liable with the internet user or the operator on its platform with regard to the additional injury or damage.*

Article 4

Article 4 provides that where notice of a complaint or lawsuit has not been received “within a reasonable period of time” after the statement of non-infringement is forwarded to the right holder, then the Internet service provider or e-commerce platform operator shall terminate the existing measures in a timely manner. What is considered a “reasonable period of time” is often subject to dispute, and we note that the same principle is addressed in the Guiding Opinions under Article 11. To protect the rights of all parties involved, and for consistency with the Guiding Opinions, we recommend the following:

*Where the Internet service provider or e-commerce platform operator doesn't receive any notice that the right holder has filed a complaint or lawsuit within ~~a reasonable period of time~~ **25 working days** after the forwarded statement reaches the right holder, it shall terminate measures that have been taken in a timely manner.*

Article 5

Inasmuch as (i) Article 10 of the Guiding Opinions (“Article 10”) and Article 5 of the Official Reply (“Article 5”) are both directed to a malicious declarer, (ii) Article 10 provides a list of factors that may be taken into account in determining whether the statement by the declarer is malicious and (iii) to promote consistency between Article 10 and Article 5, it is respectfully submitted that the factors enumerated under Article 10 be incorporated into Article 5 as follows:

Where the submission of a malicious statement that may be determined by the factors listed pursuant to Article 10 of the Guiding Opinions of the Supreme People's Court on the Trial of Intellectual Property Disputes Involving E-Commerce Platforms results in termination of measures by the

internet service provider or the operator of the e-commerce platform, which causes additional injury or damage to the intellectual property right owner, the people's court may, at the request of the intellectual property right owner, increase the liability of the malicious declarer with regard to the additional part of the injury or damage.

Article 6

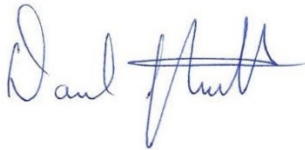
Article 6 addresses the applicability of the Official Reply to pending cases. It is respectfully submitted that the timing of whether the last instance of a case has “concluded” be clarified. IPO proposes the following revision:

*The Official Reply shall apply to the case of which **the judgment for** the last instance has not **been issued concluded**. The Official Reply shall not apply to the case of which **the judgment for** the last instance has **been issued concluded** and the case of which the retrial has been applied for by the party concerned or approved according to the procedure for trial supervision.*

We thank the Supreme People's Court for the opportunity to comment, and we welcome further dialogue and opportunity for cooperation.

We have enclosed this letter as translated herewith.

Sincerely,



Daniel J. Staudt
President

Attachment