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Property
Owners
Association

Third Civil Division
Supreme People's Court
No. 27 Dongjiaominxiang
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Via Email: ipdivision@court.gov.cn

Re: IPO's Comments on "Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Patent Infringement Disputes (III) (Draft for Comments)" released on December 20, 2025

To the Supreme People's Court of the People's Republic of China:

The Intellectual Property Owners Association ("IPO") appreciates the opportunity to provide comments on the *Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Patent Infringement Disputes (III) (Draft for Comments)* (the "Draft Interpretation") released on December 20, 2025.

IPO is an international trade association representing a wide array of stakeholders in all industries and fields of technology that own, or are interested in, intellectual property (IP) rights. IPO membership includes over 125 companies and 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.

IPO commends the Supreme People's Court for its continued efforts to clarify patent litigation standards and curb abusive practices. IPO believes the Draft Interpretation makes significant strides in addressing forum shopping and malicious litigation. To further these goals and ensure the efficient administration of justice, IPO respectfully submits the following specific comments and proposed revisions.

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Articles 1 and 3

IPO strongly supports Articles 1 and 3. As the Draft Interpretation correctly identifies, the manufacturing of jurisdictional connecting points—such as by purchasing products online for delivery to a specific location solely to establish jurisdiction—promotes forum shopping. This practice increases litigation costs and unpredictability for defendants who operate nationwide platforms or distribution networks.

IPO believes Article 3, in particular, provides a necessary safeguard by explicitly excluding "the place of delivery or the place of receipt for online shopping which can be arbitrarily selected by the plaintiff" from the sales act locations. IPO recommends retaining this language in its entirety to ensure cases are heard in forums with a genuine connection to the dispute.

Article 2

Article 2 currently permits the court of first instance to "organize the exchange of evidence and convene pre-trial conferences" while an objection to jurisdiction is under appeal.

IPO suggests revising this provision. Allowing substantive pre-trial proceedings to continue while jurisdiction is contested is inefficient. If the appellate court determines the first-instance court lacks jurisdiction, the resources spent on evidence exchange and pre-trial conferences in that venue would be largely wasted. Furthermore, this rule in its current form may encourage plaintiffs to file in favorable venues solely to secure advantageous pre-trial rulings (such as discovery orders) before the case is inevitably transferred.

IPO therefore proposes the following revisions:

Article 2 Where a party appeals against a first-instance ruling that rejected an objection to jurisdiction, before the People's Court of the second instance makes a final ruling on this, the People's Court of the first instance ~~may organize the exchange of evidence and convene pre-trial conferences, but shall not render a judgment shall suspend the litigation proceedings. If the People's Court of the second instance rules that the objection to jurisdiction is established, the records of the aforementioned exchange of evidence and pre-trial conferences shall serve as the basis for the trial by the People's Court to which the case is transferred.~~

Article 4

IPO supports the requirement in Article 4 for plaintiffs to submit a Patent Evaluation Report in utility model and design cases. This requirement helps ensure that asserted rights have a presumption of validity before burdening the court and defendant.

However, the current text is silent on the timeline and the defendant's rights. To prevent ambush and ensure fairness, the specific "reasonable period" should be clarified, and defendants should be explicitly permitted to submit their own evaluation reports or counter-evidence regarding validity.

IPO therefore proposes the following revisions:

Article 4 ...The People's Court may... require the plaintiff to submit a Patent Evaluation Report. The defendant may also submit a Patent Evaluation Report or other evidence regarding the validity of the patent. If the plaintiff refuses to submit it within a reasonable period (generally not exceeding 30 days) without justifiable reasons, the People's Court shall rule to dismiss the lawsuit.

Article 5

Article 5 allows the People's Court in second-instance proceedings to permit a right holder to change their asserted claims or to use amended claims as the basis for comparison if the original claims were declared invalid or amended by the Patent Administration Department.

IPO respectfully submits that while this provision promotes judicial economy by aligning the civil trial with the administrative result, it raises concerns regarding legal certainty and notice. When a patentee amends claims to avoid invalidation (often by narrowing the scope), they are essentially admitting that the original claims were defective. It would be inequitable to impose liability for damages for the period prior to the amendment, as the public could not have known the definitive valid scope of the patent at that time.

IPO recommends clarifying that when a claim is amended to overcome invalidity, the effective date for the calculation of infringement damages should be reset to the date the amended claims are recognized.

IPO therefore proposes the following revisions:

Article 5

Before the conclusion of the court debate in the second-instance proceedings, if amendments to the claims asserted by the right holder are accepted by the Patent Administration Department under the State Council and have become legally effective, the People's Court shall compare the amended claims with the alleged infringing technical solution. However, the calculation of damages shall only be based on the period starting from the date the decision accepting the amendment takes legal effect.

Article 8

Article 8 clarifies the standing of licensees to sue. While IPO agrees that licensees should have avenues for relief, allowing multiple general (*pu tong*) licensees to file separate lawsuits against the same defendant for the same act can lead to harassment and duplicative litigation. IPO respectfully requests re-consideration on this issue.

Article 10

Article 10, as currently drafted, could open a significant loophole for infringers to avoid infringement liability by incorporating only one defect recited in the specification. IPO recommends either deleting this article or revising it so that all defects recited in the specification must be present for this article to apply.

Article 12

Article 12, in its present form, may introduce unnecessary ambiguity – it is unclear whether this article is for direct, equivalent, or both types of infringement. This article is unclear since it has to be assumed that this article is for infringement by equivalents, because if the specification intentionally excludes a technical solution, then this technical solution should not be in the claims in the first place. Further, this article conflicts with the current international practice regarding infringement by equivalents; this was the approach in the United Kingdom (not infringing by equivalents if the specification/claims intentionally exclude a technical solution), but this approach was abolished in the UK after the *Actavis v Eli Lilly* 2017 case. Therefore, IPO recommends deleting this article entirely. If this article is to be retained, IPO recommends revising it as shown below:

Article 12 If a person of ordinary skill in the art, by reading the claims, description, file history, and so on, can determine that the claims intentionally

exclude a specific technical solution, and the right holder asserts that the specific technical solution falls within the scope of protection of the patent right by equivalents, the People's Court shall not support it.

Article 13

IPO commends the attempt of the Supreme People's Court to clarify how a functional feature—one defined by its function or effect—is treated during infringement analysis. However, the current wording of Article 13 is unclear and risks creating ambiguity in the scope of protection. IPO respectfully seeks clarification on this issue.

Article 14

Article 14 addresses the situation where a patent method is "solidified" into a product. IPO understands the Court's intent to prevent circumvention of method patents by actors who embed the method into apparatuses or software products.

However, IPO is concerned that the phrase "plays an irreplaceable role" is ambiguous and potentially overbroad. In the context of computer-implemented inventions, general-purpose hardware (such as a CPU or memory module) or generic software platforms often play an "irreplaceable role" in executing a patented method simply because the method cannot be performed without them. Yet, these components are staple articles of commerce with many non-infringing uses.

To prevent Article 14 from inadvertently extending liability to manufacturers of general-purpose technologies, IPO recommends clarifying that this provision applies only when the product is specifically adapted for the patent and lacks substantial non-infringing uses.

IPO therefore proposes the following revisions:

Article 14 Where an alleged infringer, for the purpose of production and operation, solidifies the substantive content of a patent method into an alleged infringing product, which plays an irreplaceable role in reproducing the patented technical solution, the People's Court may determine that they have implemented the said patent method, provided that the alleged infringing product is specifically

adapted to implement the patent method and has no substantial non-infringing use.

Article 19

Article 19, Paragraph 1, currently states that the Court "shall not support" a prior art defense based on a combination of two or more different technical solutions recorded in the *same* reference document.

In patent invalidation proceedings before the China National Intellectual Property Administration (CNIPA), however, a single reference document containing multiple embodiments can often serve as the basis for an obviousness (inventive step) challenge if a person of ordinary skill in the art would be motivated to combine them.

If the Civil Court adopts a stricter standard than CNIPA—rejecting a defense based on evidence that would successfully invalidate the patent at CNIPA—it creates a "validity gap." This would force defendants to suspend civil litigation and initiate separate administrative invalidation proceedings to prove what could have been efficiently resolved by the Court, which would cause unnecessary delay and waste judicial resources.

IPO therefore proposes the following revisions:

Article 19 Where a defendant asserts a prior art defense based on a combination of two or more different technical solutions recorded in the same reference document, and a person of ordinary skill in the art would have been motivated to combine them to solve the technical problem, the People's Court shall ~~not~~ support it.

Article 21

Article 21 provides a non-infringement defense based on a "prior application filed with the Patent Administration Department under the State Council." IPO supports this defense but respectfully suggests two clarifications to align with the "conflicting application" standards of Article 22 of the Patent Law and international practice.

First, the relevant date for comparison should be the *priority date* of the prior application, not merely its filing date, to respect the priority system. Second, consistent with the global nature of technology, a prior application should include international applications,

or at least international applications (PCT) that designate China, as these effectively become Chinese applications.

IPO therefore proposes the following revisions:

Article 21 Where a party asserts a non-infringement defense based on a prior application filed with the Patent Administration Department under the State Council or another patent office overseas, that has been published, and all technical features of the alleged infringing technical solution have been separately and completely disclosed by the prior application as of its filing date (or priority date, if priority is claimed), the People's Court shall determine that it does not constitute patent infringement.

Article 24

Regarding the "Legitimate Source" defense, the Draft provides two options. IPO strongly advocates for **Option 1**, with a suggested modification.

When a seller successfully proves a legitimate source defense—meaning they did not know the product was infringing and have disclosed the supplier—they are, by definition, an innocent party. Penalizing an innocent distributor by forcing them to pay the plaintiff's "reasonable expenses" (which can be substantial) undermines the purpose of the defense. The plaintiff should seek these costs from the culpable manufacturer. IPO suggests a modification to Option 1 to account for rare cases of bad faith.

IPO therefore proposes adopting **Option 1** with the following modification:

Article 24 Where a legitimate source defense is established and the right holder requests a judgment ordering the alleged infringer to bear the reasonable expenses paid to stop the infringing act, the People's Court shall not support it, unless the alleged infringer has acted in bad faith.

Articles 25 and 26

IPO strongly supports the inclusion of Articles 25 and 26 regarding malicious litigation. Deterring bad-faith assertions—such as lawsuits based on patents known to be invalid or filed solely to disrupt business financing—is crucial for a healthy innovation ecosystem. IPO encourages the Court to retain these provisions to discourage parties from abusing the judicial system for illegitimate gain.

IPO thanks the Supreme People's Court for its consideration of these comments and welcomes any further opportunity to discuss these important issues. IPO has enclosed this letter as translated herewith.

Sincerely,



John J. Cheek
President

Enclosure