

Order of the Ministry of Commerce, State Administration of Taxation, State Bureau of Copyright and State Intellectual Property Office

No. 1

The Protection Measures for Intellectual Property Rights (IPRs) during Exhibitions adopted by the Ministry of Commerce, the State Administration for Industry and Commerce, the State Bureau of Copyright and the State Intellectual Property Office upon deliberation, are hereby promulgated and shall come into force as of March 1, 2006.

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Protection Measures for Intellectual Property Rights during Exhibitions

Chapter I General Provisions

Article 1 The present Measures are formulated according to the Foreign Trade Law of the People's Republic of China, the Patent Law of the People's Republic of China, the Trademark Law of the People's Republic of China, and the Copyright Law of the People's Republic of China as well as the relevant administrative regulations for the purpose of intensifying the IPRs protection during exhibitions, safeguarding the order of the exhibition industry and promoting the sound development thereof.

Article 2 The present Measures shall apply to the protection of relevant patents, trademarks and copyrights in all kinds of exhibitions, trade fairs, expositions, commodity fairs and shows concerning the economic and technical trade as held within the territory of the People's Republic of China.

Article 3 The administrative department of exhibitions shall intensify the coordination, supervision, examination regarding the IPRs protection during exhibitions and safeguard the normal trading order therein.

Article 4 The exhibition sponsor shall safeguard the legitimate rights and interests of IPRs holders legally. The exhibition sponsor shall, when attracting investment and canvassing exhibitions, intensify the IPRs protection for participants to the exhibition as well as the examination of the IPRs status of the items on exhibition (including exhibited items, exhibition boards and relevant publicity materials, etc.). During an exhibition, the sponsor shall actively cooperate with the administrative IPRs department in the IPRs protection work.

The exhibition sponsor may, by the manner of signing the clause or contract on the IPRs protection with the participants of the exhibition, intensify the IPRs protection during the exhibition.

Article 5 The participant of exhibition shall take part in an exhibition legally, not infract the IPRs of any other person or entity and assist the administrative IPRs department or judicial department in the relevant investigation.

Chapter II Treatment for Complaints

Article 6 If an exhibition lasts for 3 days or more and if the administrative department of

exhibitions believes it is required, the exhibition sponsor shall establish an office in charge of IPRs complaints during the exhibition. Where an office in charge of IPRs complaints is established, the IPRs administrative department at the locality of the exhibition shall dispatch its personnel to station therein and handle the case of infringement in accordance with law.

In case no office in charge of complaints is established for an exhibition, the IPRs administrative department at the locality of exhibition shall intensify the guidance for and supervision over the IPRs protection during the exhibition as well as the handling of relevant cases therein. The exhibition sponsor shall publicize the contact persons and ways of the IPRs administrative department at the locality of the exhibition in an eye-catching place of the exhibition venue.

Article 7 An office in charge of IPRs complaints in an exhibition shall be comprised of the personnel from the sponsor of the exhibition, the administrative department of exhibitions, the IPRs administrative department in charge of patents, trademarks, and copyrights, and perform the following functions and duties:

- (1) Receiving the complaints of the IPRs holders, and suspending the item as suspected of infringement on IPRs on display during the exhibition;
- (2) Transferring the relevant complaint materials to the competent IPRs administrative department;
- (3) Coordinating and supervising and urging the treatment for complaints;
- (4) Carrying out the statistic and analysis on the information regarding the IPRs protection during the exhibition; and
- (5) Any other relevant matters.

Article 8 An IPRs holder may file a complaint to the office in charge of IPRs complaints during an exhibition or to the IPRs administrative department. The IPRs holder shall, when filing a complaint to the office in charge of IPRs complaints, submit the following materials:

- (1) A legitimate and effective certificate of IPRs ownership: where any patent is involved therein, the patent certificate, the text of patent announcement, the identity certification of the patent owner, the certification on the legal status of the patent shall be submitted; where any trademark is involved therein, the certification documents of trademark registration shall be submitted, which shall be confirmed by means of the signature or seal affixed by the complainant, and the identity certification of the trademark owner shall be submitted as well; where any copyright is involved therein, the certification of the copyright and the identity certification of the copyright owner shall be submitted;
- (2) The basic information about the parties as suspected to have committed any infringement;
- (3) The explanations and evidence for any suspected infringement; and
- (4) Where an agent is entrusted to file a complaint, the relevant Power of Attorney shall be submitted.

Article 9 In the case of any failure to meet the provisions of Article 8 of the present Measures, an office in charge of IPRs complaints during an exhibition shall inform the related complainant or claimant timely to supplement the relevant materials. In case it fails to make the supplement, the complaint shall not be accepted.

Article 10 Where a complainant brings any damage to the relevant respondent by submitting any false complaint material or by any other fabricated complaint, he shall be subject to the relevant legal liabilities.

Article 11 After receiving the complaint materials accorded with Article 8 of the present Measures, The office in charge of IPRs complaints during an exhibition shall transfer it to the relevant IPRs

administrative department within 24 hours

Article 12 When the local IPRs administrative department accepts the requirement of complaint or claim, it shall inform the relevant exhibition sponsor as well as the relevant respondent to the complaint or claim timely.

Article 13 In the procedures for handling any complaint or claim concerning infringement on IPRs, the local IPRs administrative department may, according to the exhibition period, designate the limit of answer time for the relevant respondent to a complain or claim

Article 14 Where a respondent to a complaint or claim submits his Statement of answer, the local IPRs administrative department shall make a decision and deliver it to the two parties timely, unless any further investigation is required.

Where the respondent to a complaint or claim fails to submit his Statement of answer within the time limit, the local IPRs administrative department shall not be influenced making the decision.

Article 15 Where an exhibition is concluded, the relevant IPRs administrative department shall notify the treatment decision to the exhibition sponsor timely . The exhibition sponsor shall finish the statistic and analysis work on IPRs protection during the exhibition and report the relevant circumstance to the IPRs administrative department timely.

Chapter III Patent Protection during Exhibition

Article 16 Where any office in charge of IPRs complaints requires the assistance of any local intellectual property bureau, the local intellectual property bureau shall provide positive cooperation and participate in the IPRs protection during the exhibition. The local intellectual property bureau may carry out the following work during the exhibition:

- (1) Accepting a complaint of suspected infringement on IPRs is transferred by the office in charge of IPRs complaints in the exhibition, and handling it according to the relevant provisions and regulations of the patent law;
- (2) Accepting the claim of treatment for any dispute over suspected infringement on patent relating to any exhibited item and handling it according to the provisions of Article 57 of the Patent Law; and
- (3) Accepting the tip-offs on any suspected counterfeit of other's patent or imitated patent relating to any exhibited item, or investigating and handling any action of counterfeit of other's patent or imitated patent relating to any exhibited item by authority, and giving a punishment according to the relevant provisions of Articles 58 and 59 of the Patent Law.

Article 17 Under any of the following circumstances, the local intellectual property bureau may not accept any complaint of patent infringement or claim for treatment:

- (1) Where a complainant or claimant has filed a lawsuit of patent infringement to the people's court;
- (2) Where any patent is in the requiring procedures for declaring invalidation of patent right;
- (3) Where any dispute over the ownership of the patent right is in the trial procedures of the people's court or in the mediation procedures of the administrative department of patent; or
- (4) Where any patent right has been terminated and its owner is attempting to resume the patent right.

Article 18 The local intellectual property bureau shall, when notifying the respondent to a complaint or claim, conduct instant investigation for obtaining the evidence, read and copy the relevant documents relating to the case, inquire of the parties concerned, carry out on-the-spot inspection by such means as camera shooting or video camera shooting, or collect the evidence by

sampling.

The local intellectual property bureau shall, when collecting the evidence, make the note that shall have the signatures or seals of relevant undertaker and parties concerned under investigation for evidence collection. Where any party concerned under investigation for evidence collection refuses to render his signature or seal on the note, the reason shall be indicated on the note. Where any other person is on the spot, he may render his signature on the note at the same time.

Chapter IV Trademark Protection during an Exhibition

Article 19 Where an office in charge of IPRs complaints during an exhibition requires the assistance from the local industry and commerce administrative department, the latter organ shall provide active cooperation and participate in the IPRs protection work during the exhibition. The following works during the exhibition by the local industry and commerce administrative department may include:

- (1) Accepting complaints of suspected infringement on trademark transferred by the office in charge of IPRs complaints during the exhibition and handling them according to the relevant provisions of laws and regulations on trademark;
- (2) Accepting complaints of infringement on the right to exclusive use of trademark in accordance with the provisions of Article 52 of the Trademark Law; and
- (3) Investigating and punishing any case involving trademark irregularity by authority.

Article 20 Under any case of the following circumstances, the local industry and commerce administrative department may refuse to accept any complaint or claim for treatment concerning infringement on the right to exclusive use of trademark:

- (1) Where a complainant or claimant has filed a lawsuit of trademark infringement to the people's court; or
- (2) Where any right of trademark has been invalidated or cancelled.

Article 21 The local industry and commerce administrative department may, after deciding to accept any complaint or claim, carry out the investigation and treatment according to the relevant provisions of laws and regulations on trademark.

Chapter V Copyright Protection during Exhibition

Article 22 Where an office in charge of IPRs complaints during an exhibition requires the assistance from the local administrative department for copyright, the latter organ shall provide active cooperation and participate in the IPRs protection during the exhibition. The following works by local administrative department for copyright during the exhibition may include:

- (1) Accepting the complaints of suspected infringement on copyright transferred by the office in charge of IPRs complaints during the exhibition and handling them according to the relevant provisions of laws and regulations on copyright; and
- (2) Accepting the complaints of infringement on copyright in accordance with the provisions of Article 47 of the Copyright Law and giving a punishment according to the relevant provisions of the Copyright Law.

Article 23 The local administrative department for copyright may, after accepting a complaint or claim, adopt the following means to collect evidence:

- (1) Reading and copying the documents and archives, account books or any other written materials relating to the suspected infringement;
- (2) Collecting the evidence by sampling the duplicate of the suspected of infringement; and
- (3) Registering and preserving the duplicate of the suspected of infringement.

Chapter VI Legal Liabilities

Article 24 Where the local IPRs administrative department believes that a complaint of suspected infringement on IPRs is in fact, it may punish the exhibitor in collaboration with the administrative department of exhibitions according to law.

Article 25 Where the local IPRs administrative department believes that a claim for the treatment of suspected infringement on any invention right or new utility model right is in fact, relevant treatment decision shall be decided, according to the provisions of paragraph 1 of Article 11 of the Patent Law on prohibiting promised sale as well as the provisions of Article 57 of the Patent Law on ordering the infringer to stop his infringement immediately, and order the respondent to the claim to withdraw all the exhibited items of infringement, to destroy the publicity materials of introduction to exhibited items of infringement and to change the exhibition board of introduction to exhibited items of infringement.

Where the local IPRs administrative IPRs department believes that a claim for the treatment of suspected infringement on any patent of exterior design and the respondent to the claim sells his items on exhibition is in fact, the relevant treatment decision shall be decided, according to the relevant provisions of paragraph 2 of Article 11 of the Patent Law on prohibited sales action and Article 57 of the Patent Law on ordering the infringer to stop his infringement action immediately, and order the respondent to the claim to withdraw any exhibited item of infringement from the exhibition.

Article 26 Where anyone fabricates any other's patent or fabricates any patented by unpatented product, or fabricates any patented method by non-patented method , the local intellectual property bureau shall give a punishment according to the provisions of Articles 58 and 59 of the Patent Law.

Article 27 Where the local industry and commerce administrative department believes that a claim for treatment of any infringement on trademark is in fact, it shall give a punishment according to the relevant provisions of the Trademark Law and the Regulation on the Implementation of the Trademark Law, etc.

Article 28 Where the administrative department for copyright believes that a claim for treatment of any infringement on copyright as well as the related rights is in fact, relevant punishment shall be given according to the provisions of Article 47 of the Copyright Law, the relevant exhibited items of infringement as well as publicity materials of introduction to exhibited items of infringement shall be confiscated and destroyed, and the exhibition boards of introduction to exhibited items of infringement shall be changed.

Article 29 Where, upon investigation, any exhibited item under complaint or claim of infringement has been determined or decided in fact by the people's court or the IPRs administrative department and has taken legal effect , the local administrative IPRs department may directly make a decision on treatment as prescribed in Article 26, 27, 28 or 29.

Article 30 Where a claimant pleads not only to prohibit an infringing exhibition conducted by the infringer, but also pleads to prohibit any other IPRs infringement committed by the same infringer, the local IPRs administrative department may give treatment to any suspected infringement that occurs within its jurisdiction area according to the relevant provisions of laws, regulations and rules on IPRs.

Article 31 Where any infringement by a exhibitor is in fact, the administrative department of exhibitions may make an announcement to this exhibitor in accordance with the law. Where the

infringements by the exhibitor were more than twice consecutively, the exhibition sponsor shall prohibit the said exhibitor to take part in the next exhibition.

Article 32 Where a sponsor fails to fulfill its obligation regarding the IPRs protection during an exhibition, the administrative department of exhibitions shall give a warning thereto and disapprove any application for holding any relevant exhibition again upon the circumstance in accordance with the law.

Chapter VII Supplementary Provisions

Article 33 Where any case hasn't been concluded at the end of an exhibition, the relevant facts and evidence of the case may be confirmed by the exhibition sponsor. The IPRs administrative department at the locality of the exhibition shall, within 15 workdays, transfer it to the IPRs administrative department with jurisdiction for treatment according to law.

Article 34 The term "IPRs administrative department" as mentioned in the present Measures refers to the administrative departments for patent, trademark and copyright. The term "administrative department of exhibitions" as mentioned in the present Measures refers to the department in charge of examination and approval or registration of exhibitions.

Article 35 The present Measures shall come into force as of March 1, 2006.

