

Several Provisions of the Supreme People's Court for the Application of Law to Pre-trial Cessation of Infringement of Patent Right  
(Adopted at the 1179th Meeting of the Adjudication Committee of the Supreme People's Court on 5 June 2001)

With a view to protecting the legitimate rights and interests of patentees and other interested parties, these Several Provisions have been hereby made as follows for the application of law to the pre-trial cessation of infringement of the patent right according to the relevant provisions of the General Principles of the Civil Law of the People's Republic of China, the Patent Law of the People's Republic of China (hereinafter referred to as the Patent Law), the Civil Procedure Law of the People's Republic of China ( hereinafter referred to as the Civil Procedure Law):

**Article 1** Any patentee or interested party may file an application with the people's court for ordering the party against whom the application is filed to cease, before the court trial, its or his act of infringement of the patent right in accordance with the provision of Article 61 of the Patent Law.

The interested party that files an application refers to the licensee of a licensing contract for exploitation of the patent and the legal heir to the property right of the patent, etc. Among the licensees of the licensing contract for exploitation of the patent, the licensee of an unlimited exclusive patent licensing contract (which precludes, among others, the licensor from exploiting the patent licensed) alone may file an application with the people's court; the licensee of an exclusive patent licensing contract (which does not preclude the licensor from exploiting the patent licensed) may file an application where the patentee does not.

**Article 2** Any application for pre-trial cessation of infringement of the patent right shall be filed with the people's court that has the jurisdiction over cases of patent infringement.

**Article 3** Any patentee or interested party who files an application with the people's court shall submit the application in writing, in which shall be clearly indicated the interested party per se and the basic information thereof, the contents and scope of and reasons for the application. The reasons for the application shall include the specific statement that irremediable damages will be done to the legitimate rights and interests of the applicant if the relevant act is not to be promptly ceased.

**Article 4** The applicant shall submit the following evidence when filing an application:

(1) The patentee shall submit document proving the authenticity and validity of its or his patent right, including, among other things, the patent certificate, claims, description and receipt of payment of the patent annuity. Where the application filed relates to a patent for utility model, the applicant shall submit the search report made by the Patent Administrative Department under the State Council.

(2) The interested party shall submit the patent licensing contract and the proof of filing the contract with the Patent Administrative Department under the State Council; where the contract is not filed therewith, it or he shall submit the certificate of the patentee or other evidence showing that it or he enjoys the right.

Where the licensee of an exclusive licensing contract files an application alone, it or he shall submit the proof of abandonment by the patentee of the application.

The heir to the patent property right shall submit evidence indicating that it or he has already inherited or is in the process of inheriting the property right of the patent.

(3) Evidence shall be submitted to prove that the party against whom an application is filed is committing or will commit an act of infringing its or his patent right, including proofs of the allegedly infringing product and the reference material comparing the technical features of the patented technology and the allegedly infringing product.

**Article 5** The ruling made by the people's court to cease an act of patent infringement before instituting legal proceedings shall be confined to the application filed by the patentee or interested party.

**Article 6** Any applicant shall provide guaranty when filing an application; where no guaranty is provided, the application is rejected.

Where the guaranty provided by the interested party in the form of pledge or hypothecation is reasonable and valid, the people's court shall grant its permission.

When the people's court determines the scope of the guaranty, it shall take account of the sales turnover of the product in question and the reasonable costs of storage and stock-keeping; of the losses that may be caused by ceasing the relevant act of the party against whom the application is filed and other reasonable costs, such as the wages or salaries and of any other factors involved as well.

**Article 7** Where, in the process of executing the ruling to cease the relevant act, the party against whom the application is filed may suffer greater losses due to the adoption of the measure, the people's court may order the applicant to provide supplementary guaranty. Where no such guaranty is provided, the measure to cease the relevant act shall be removed.

**Article 8** Any measures taken to execute the ruling to cease the act of patent infringement shall not be removed because the party against whom the application is filed provides a counter-guaranty.

**Article 9** After accepting the application filed by a patentee or interested party to order to cease the act of patent infringement, the people's court shall make a ruling in writing within 48 hours where the application conforms with Article 4 of these Provisions upon examination; where the ruling is made to order the party against whom the application is

filed to stop its or his act of patent infringement, the ruling shall be executed without delay.

Where it is necessary for the people's court to verify the relevant facts within the aforementioned time limit, the people's court may summon and inquire one or both interested parties, and, then, promptly make the ruling.

The people's court making the ruling to order the party against whom the application is filed to cease the relevant infringing act before instituting legal proceedings shall promptly notify the party against whom the application is filed, or does so within no more than 5 days at the latest.

**Article 10** Where the interested party is not satisfied with the ruling, it or he may apply for reconsideration within 10 days from the date of the receipt of the ruling. The execution of the ruling shall not be suspended during the reconsideration.

**Article 11** The people's court shall examine the application for reconsideration filed by the interested party as to the following aspects:

- (1) Whether or not the act that is being committed or will be committed by the party against whom the application is filed constitutes an infringement of patent right;
- (2) Whether or not taking the measure will cause irremediable damages to the legitimate rights and interests of the applicant;
- (3) The content of the information relating to the applicant's provision of the guaranty;  
and
- (4) Whether or not to order the party against whom the application is filed to cease the relevant act would impair the public interests.

**Article 12** Where the patentee or interested party does not institute legal proceedings within 15 days after the people's court takes the measure to cease the relevant act, the people's court shall remove the adopted measure of the ruling.

**Article 13** Where an applicant does not institute legal proceedings or the application is erroneous, causing losses to the party against whom the application is filed, the party against whom the application is filed may institute legal proceedings in the people's court having the jurisdiction, requesting the applicant to compensate for the losses; or file a request for damages during the patent infringement litigation instituted by the patentee or interested party. The people's court may simultaneously handle the requests.

**Article 14** The ruling ordering to cease the infringement of patent right shall generally remain effective until the final legal instrument comes into effect. The people's court may also fix a specific time limit according to the facts of the case; after the expiration of the time limit, the people's court may make a ruling for continued cessation of the relevant

act at the request of the interested party.

**Article 15** Where the party against whom the application is filed is contrary to the ruling made by the people's court to order the cessation of the relevant act, the matter shall be handled according to the provision of Article 102 of the Civil Procedure Law.

**Article 16** When executing the pre-trial measure to cease the act of patent infringement, the people's court may, according to the application of the interested party, simultaneously preserve the evidence in the light of the provision of Article 74 of the Civil Procedure Law.

The people's court may, according to the application of the interested party, preserve the property pursuant to Articles 92 and 93 of the Civil Procedure Law.

**Article 17** Where the patentee or the interested party simultaneously requests for ceasing an act of patent infringement in advance when it or he institutes proceedings against the act, the people's court may first make its determination.

**Article 18** In respect of a case to stop a patent infringement, the applicant shall pay the fees according to the Standards of the People's Court for Litigation Charges and the supplementary provisions thereof.

**Article 19** These Provisions come into force on 1 July 2001.