

**The Supreme People's Court Releases  
Draft Interpretation (III) on Several Issues Concerning the Application of Law in the Trial  
of Patent Infringement Dispute Cases (Draft for Comments)**

On December 20, 2025, the Supreme People's Court (SPC) released a draft of the "Interpretation on Several Issues Concerning the Application of Law in the Trial of Patent Infringement Dispute Cases (III)" and solicited public comments. The deadline for soliciting comments was February 2, 2026.

This Draft of the judicial interpretation forms part of a series of judicial interpretations since 2009, when the Interpretation on Several Issues Concerning the Application of Law in the Trial of Patent Infringement Dispute Cases was issued, and 2016, when the Interpretation (II) on Several Issues Concerning the Application of Law in the Trial of Patent Infringement Dispute Cases was issued and later was amended in 2020. As a result, this Draft is characterized by the systematic consolidation of the provisions scattered in previous individual judicial interpretations and the adjudicative rules adopted in judicial practice. Among them, the criteria for determining malicious litigation proposed as a new content are particularly noteworthy. The following briefly introduces the main contents of the 31 articles of the Draft Interpretation.

**(1) Regarding Jurisdictional Objections (Articles 1 to 3)**

Provisions are introduced to address situations where the plaintiff adds a defendant who has no substantive connection in order to have the case heard by a court in its favor, and where the defendant raises jurisdictional objections without a substantive basis in order to get more time. It is further provided that the place of delivery of goods or the place of receipt of goods for online shopping shall not be regarded as the location of sales act for the purpose of determining jurisdiction.

**(2) The relationship between infringement litigation and patent evaluation reports and/or invalidation proceedings (Articles 4-7)**

According to current judicial interpretations, in infringement litigation involving utility model or design patents, courts may require the right holder to submit a patent evaluation report. The Draft Interpretation further provides that if the plaintiff refuses to submit the evaluation report without justification within a reasonable period, the lawsuit shall be dismissed. In addition, when the evaluation report contains a negative conclusion, the court shall ask the defendant whether a prior art defense is to be raised or whether a request for invalidation is to be filed; where the

defendant requests suspension of the proceedings on the ground of filing an invalidation request, the court shall rule to suspend the proceedings, unless it is obvious that the infringement cannot be established.

### **(3) Standing to sue in infringement litigation (Articles 8-9)**

Under previous judicial interpretations, patent licensees are categorized as exclusive licensees, sole licensees, and non-exclusive licensees. An exclusive licensee under Chinese judicial interpretations has the right to exclude all others, including the patentee, from exploiting the patent, a sole licensee has the right to exclude third parties other than the patentee from exploiting the patent. This Draft Interpretation provides that an exclusive licensee may file a lawsuit by itself; a sole licensee may file a joint lawsuit with the patentee or bring a lawsuit by itself if the patentee does not file a lawsuit; a non-exclusive licensee may file a lawsuit by itself with the explicit authorization of the patentee. This is in line with the provisions of the current judicial interpretation. Furthermore, it is provided that if an exclusive licensee obtains damages in litigation, the court shall not support a claim for damages by the patentee in a separate litigation for the same patent right unless the patentee can prove that the infringement has caused additional damages.

Furthermore, the Draft Interpretation provides that an assignee of a patent right may, upon authorization from the assignor, file a lawsuit in its own name for infringement that occurred before the date of the assignment registration.

### **(4) Claim Interpretation (Articles 10-16)**

The Draft Interpretation provides that if the accused technical solution has a "technical defect in the prior art to be overcome" as described in the specification, the court shall find that such accused technical solution does not fall within the technical scope of the patent right, i.e., no infringement is found.

In addition, the Draft clearly provides that if the accused infringer can prove that a narrowing amendment or statement made by the applicant or patentee to the claims, specification and drawings has not been explicitly denied by the examiner, the doctrine of prosecution history estoppel shall apply, and the patentee shall be precluded from claiming that the narrowed subject matter is included within the scope of protection of the patent right. It also provides that if a person skilled in the art can determine that a claim intentionally excludes a particular technical solution based on the description in the specification, etc., the patentee shall not assert that such specific technical solution falls within the scope of protection of the patent right.

So-called functional features in claims are generally interpreted as being limited to the embodiments disclosed in the specification and the equivalent thereof. The Draft Interpretation,

however, specifies one exception: features that define the invention by function or effect but also limit or imply specific structures, components, steps, conditions, or their relationships corresponding to such functions or effects shall not be regarded as functional features.

The Draft Interpretation provides that if the accused infringer, for production and business purposes, embodies the substantive content of a patented method in an alleged product and plays an irreplaceable role in reproducing the patented technical solution, the court may determine that such act constitutes direct infringement of the patented method. This is the legal principle applied in a well-known patent infringement case involving communication methods. In the case, although the claims of the method patent include steps implemented by the user terminal, the act of operators providing router products capable of implementing the core steps of the patented method has also been considered to constitute direct infringement.

Regarding the clarity requirement, the Draft Interpretation provides that if a person skilled in the art cannot determine the meaning of the technical terms in the claims even by referring to the application documents such as the specification, prosecution history, as well as reference books and textbooks, the infringement lawsuit based on such claims shall be dismissed. This standard has also been adopted in prior cases.

#### **(5) Interpretation of design rights (Articles 17-18)**

The Draft Interpretation provides that a people's court shall determine the scope of protection of a design patent in combination with the brief description. Where the reference view showing the state of use is apparently inconsistent with the brief description of the design, the reference view shall be taken into account.

The Draft Interpretation further provides that where the accused product can only display partial views, but a general consumer can infer the design features of the remaining parts based on such partial views and the characteristics of that type of product, such inferred design features may be used as a basis for infringement comparison, unless evidence to the contrary is provided by the accused party.

#### **(6) Defenses to infringement (Articles 19-24)**

Regarding the prior art defense in infringement litigation, the Draft Interpretation provides that the court shall not support a prior art defense based on a combination of two or more different technical solutions disclosed in the same reference document, but shall support a prior art defense if the contents disclosed in different parts of the same reference document are mutually interpretable in terms of context, mutually support each other in terms of technology, and jointly solve a technical problem.

The Draft Interpretation further provides that if a prior art defense is asserted based on the combination of one prior technology disclosed in a reference document and common knowledge, where such combination can be conceived of by a person skilled in the art without inventive effort, such prior art defense shall generally be supported by the Court. This provision may relax the restrictions on the prior art defense.

If a party does not raise a prior art defense or prior design defense in the first instance but raises it in the second instance, such defense shall be examined. However, a defense raised for the first time in retrial proceedings shall not be examined. If a prior art or prior design defense is not supported by the court, and new evidence is submitted in subsequent proceedings, the issue may be reexamined.

The Draft Interpretation provides: where a party asserts a non-infringement defense based on a prior application filed with CNIPA and all technical features of the alleged infringing technical solution have been completely disclosed in the prior application, the court shall determine that it does not constitute patent infringement. This provision may be understood as an extension of the scope of the prior art defense to so-called conflicting applications (i.e., applications filed before the filing date of the patent in dispute and were published thereafter). However, the specific criteria will need to be clarified through future judicial practice.

Article 77 of the Chinese Patent Law provides for the "legitimate source defense", that is, "Any person, for production and business purposes, uses, offers to sell or sells an infringing product without knowing that it was made and sold without the authorization of the patentee, shall not be liable to compensate for damage of the patentee if he can prove that he obtained the product from a legitimate source". The Draft Interpretation provides two options, for which public comments are invited, regarding the compensation scheme to be borne by parties who have carried out the use, sale, etc. if the legitimate source defense is established: one option is that the party who carried out the use, sale, etc. shall neither be liable for the losses of the right holder, nor shall they bear the reasonable expenses (litigation costs, etc.) paid by the right holder to enforce the right, while the other option is that they shall bear corresponding expenses in light of the sales circumstances.

#### **(7) Malicious litigation (Articles 25-26)**

The Draft Interpretation provides that if a right holder, knowing that he lacks legal or factual bases, initiates a patent infringement lawsuit for the purpose of obtaining illegitimate interests and causes damage to others, he shall be liable for damages for malicious litigation. This includes:

- ① Filing a lawsuit based on a patent right obtained by the right holder knowing that it is prior art or prior design, or by deception or concealment of important facts;
- ② Filing a lawsuit knowing that the patent right is invalid or has expired;
- ③ Obstructing the listing of another person's stocks

by initiating a lawsuit that is obviously lacking legal or factual bases; ④ Other circumstances that can be determined to constitute malicious litigation. In recent years, the number of cases identified as malicious litigation has been increasing. This Draft Interpretation can be understood as a summary of the criteria developed in practice over the years. In addition, this Draft Interpretation provides that the compensation amount of damages resulting from malicious litigation shall be determined by considering factors such as the degree of malice, the extent of the damage and the causal relationship.

#### **(8) Enforcement of judgments and damages compensation (Articles 27-30)**

Article 47 of the Patent Law stipulates: "Any patent right which has been declared invalid shall be deemed to be non-existent from the beginning. The decision declaring the patent right invalid shall have no retroactive effect on any judgment or mediation decision of patent infringement which has been pronounced and enforced by the court, or any decision concerning the handling of a dispute over patent infringement which has been complied with or compulsorily executed, or on any contract of patent license or of assignment of patent right which has been performed prior to the declaration of the patent right invalid; however, compensation should be given for the losses caused to others by the malicious actions of the patentee." It is clearly provided in the Draft Interpretation that the term "invalidation decision" includes both invalidation in whole and invalidation in part, and the term "enforced" covers both full and partial enforcement. Where a judgment has been enforced in part, the invalidation decision shall have retroactive effect on the part which has not been enforced. In addition, if a decision of invalidation in whole is made after the judgment in an infringement lawsuit, any subsequent application for enforcement or retrial shall not be accepted, and any ongoing enforcement shall be terminated.

It is also provided that the court may, depending on the circumstances of the case, order delayed performance interest to non-monetary obligations.

Regarding damage claims in infringement lawsuits, the Draft Interpretation provides that if the right holder claims that the compensation amount shall be determined based on the actual losses suffered by them due to infringement, the benefits obtained by the infringer due to infringement, or a reasonable multiple of the patent license fee, and submits corresponding evidence from which the amount can be reasonably determined, the people's court shall support such claim, unless the defendant submits counterevidence that is sufficient to refute it.

Specific policy regarding some parts of this Draft Interpretation (such as above point (6)) will be determined based on the results of public comments. It is expected that, after a period of deliberation following the end of the public comment period, the final version will be finalized and made public.

We will closely follow the developments regarding the Draft Interpretation and keep you informed if further updates are released.

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