

# Provisions for Investigation and Handling of Acts of Passing Off Patent by Administrative Authority for Patent Affairs

## Full text

### Chapter 1 General Provisions

#### Article 1

With a view to effectively investigating and handling acts of passing off patent and to maintaining the order of the socialist market economy, the provisions are formulated in accordance with the Patent Law, its Implementing Regulations, other related laws and regulations.

#### Article 2

The acts of passing off patent in the Provisions refer to those by any entities or persons of passing non-patented products off as patented products or of passing non-patented processes off as patented processes for production and business purposes. Such acts include:

- (1) Manufacture or sale of non-patented products bearing signs of patent;
- (2) Manufacture or sale of products bearing signs of patent after the patent right is revoked or invalidated;
- (3) Continuing to manufacture or to sell products bearing signs of patent after expiry or termination of the patent right;
- (4) Printing or supplying signs of patent for the actors of the acts defined in paragraphs (1) (2) and (3) of this Article;
- (5) Counterfeiting or altering patent certificates, other patent documents or patent application documents;
- (6) Concluding patent license contract with another person by falsely presenting non-patented technology as patented one;
- (7) Advertising non-patented technology as patented one; and
- (8) Other acts of passing patented products off as patented products or passing non-patented processes off as patented processes.

### Article 3

After expiration or termination of patent right, continued sale of the products bearing a patent signs that are manufactured before the expiration or termination is not an act of passing off patent.

### Article 4

The administrative authority for patent affairs established by a local people's government supervises, investigates and handles acts of passing off patent in the region of its administrative jurisdiction.

Where two or more administrative authorities for patent affairs have their jurisdiction, the authority that has first put a case on file is responsible for the investigation and handling, or they jointly investigate and handle the case through consultation.

In respect of acts of passing off patent that is necessary to be investigated and handled in joint efforts with related departments such as the State Administration for Industry and Commerce according to the relevant laws and regulations, the administrative authority for patent affairs may collaborate with the related departments to jointly investigate and handle the case.

### Article 5

Investigation and handling by the administrative authority for patent affairs of acts of passing off patent must be open, impartial and timely.

## Chapter 2 Staff Responsible for Investigating and Handling Acts of Passing off Patent

### Article 6

The administrative authority for patent affairs shall set up special departments or assign special staff to investigate and handle acts of passing off patent, who shall be responsible for supervising, investigating and handling acts of passing off patent and for receiving reports from the public.

### Article 7

The staff responsible for investigating and handling acts of passing off patent shall have the Enforcement Certificate of Administrative Authority for Patent Affairs issued by the State Intellectual Property Office.

In their law enforcement, the staff responsible for investigating and handling acts of passing off patent shall produce their Enforcement Certificate of Administrative Authority for Patent Affairs

### Article 8

The administrative authority for patent affairs can establish social supervision networks for investigating

and handling acts of passing off patent, get related entities or individuals to supervise acts of passing off patent in their respective system and locality, and supply information of supervision.

#### Article 9

The administrative authority for patent affairs can reward and keep confidential the entities or individuals that have rendered meritorious service for reporting, exposing, informing of and helping in investigating and handling acts of passing off patent.

### Chapter 3 Filing of Cases, Investigation and Handling

#### Article 10

In respect of the acts of passing off patent as defined in Article 2 of the Provisions discovered in its supervision and inspection or from a report it has received, the administrative authority for patent affairs shall timely put the case on file and designate its staff members holding the Enforcement Certificate of Administrative Authority for Patent Affairs to deal with the case.

#### Article 11

In any of the following events, a staff member undertaking investigation and handling shall voluntarily withdraw, and any interested party shall also have the right to apply for the withdrawal:

- (1) Where he is an interested party or an agent of the case or a close relative;
- (2) Where he has interest in the case; and
- (3) Where he has other relations with an interested party of the case that may have an effect on the investigation and handling thereof.

#### Article 12

When investigating and handling acts of passing off patent, the staff members undertaking investigation and handling may exercise these functions and authorities:

- (1) To inquire of a party and witness;
- (2) To collect evidence from sampling evidence drawn; Where evidence is likely to be lost or difficult to be obtained afterward, to record the evidence for registration and preservation with the approval from the leading person of the administrative authority for patent affairs and to make a timely decision within seven days;
- (3) To inspect the materials and products relating to an act of passing off patent, and to seal them up if

necessary;

(4) To look into the activities relating to an act of passing off patent; and

(5) To consult, copy such business materials as contracts and account books relating to an act of passing off patent.

When a staff member undertaking the investigation and handling exercises the functions and authorities, the interested parties shall cooperate and shall not refuse to do so.

#### Article 13

A note shall be taken recording the inquiry of a party or witness. The record of inquiry shall be presented to the party or witness for crosschecks, and if there are errors and omissions in the record, the party or witness shall be permitted to make corrections or additions. When there are no errors upon a crosscheck, the party or witness shall sign or put its/his seal on the record.

Where a party refuses to sign or put on its/his seal, the refusal shall be indicated in the record.

#### Article 14

When a staff member undertaking investigation and handling, consulting of the files, materials and original documents from a relevant entity or individual, during his investigation and review of the evidential materials, the relevant entity or individual shall supply authentic materials, cooperate in the investigation and make available proofs if necessary.

#### Article 15

There shall be no less than two staff members undertaking the investigation and handling when they conduct an inquiry of a party or witness or investigate the case in other places. The staff members undertaking investigation and handling, related entity and individual shall have their duty to keep confidential all the evidence and materials that should be kept confidential.

#### Article 16

When it is necessary to entrust another administrative authority for patent affairs to help with the investigation and evidence collection, a list of specific items of the requests shall be made, the administrative authority for patent affairs so entrusted shall work in a conscientious manner and make timely responses.

#### Article 17

Before making its decision on administrative punishment, the administrative authority for patent affairs shall inform the interested party of the facts, justifications and bases on which the decision is made, and

inform the interested party of the rights it/he enjoys according to law.

#### Article 18

An interested party shall have the right to make its/his statement and defense, and the facts, justifications and evidence raised thereby shall be verified and, if established, adopted by the administrative authority for patent affairs.

The administrative authority for patent affair shall not impose heavier administrative punishment on the ground that an interested party has made its/his defense.

#### Article 19

Before it imposes an administrative punishment of a relatively large sum of fine, the administrative authority for patent affairs shall inform an interested party that it/he has the right to request for a hearing to be held.

Where it requests to hold a hearing, an interested party shall make its/his request in writing within three days after the notification by the administrative authority for patent affairs. Failure to make the request at the expiry of the period is deemed abandonment of the hearing.

#### Article 20

Where, upon investigation, the fact of passing off patent is clear and the evidence conclusive, the staff member undertaking the investigation and handling writes an written punishment decision relating to the case.

The written punishment decision relating to an act of passing off patent has the following items as its contents:

- (1) The name and the address of the interested party, and the name and position of the legal representative or agent;
- (2) Verified facts, evidence of the act of passing off patent and the law that applies and the bases of law and regulations;
- (3) The decision on punishment; and
- (4) The limitation for an administrative appeal in case one is dissatisfied with the punishment decision.

The punishment decision of an act of passing off patent, which is approved by the leading official of the administrative authority for patent affairs and affixed with the official seal, is delivered to the interested party.

The punishment decision of an act of passing off patent becomes effective upon delivery.

#### Article 21

Where, upon investigation, the facts of an act to pass off patent are not available or the necessary evidence not obtained, the case is revoked with the review and approval by the administrative authority for patent affairs.

### Chapter 4 Legal Responsibility

#### Article 22

In respect of the entity or individual committing an act of passing off patent, the administrative authority for patent affairs shall order it/him to desist from the said act, to dispel the bad influence, to seal up or confiscate the signs passing off patent and the products bearing the said signs, and, according to circumstances, impose on it/him a fine of RMB from 1,000 yuan up to 50,000 yuan or of an amount one to three times that of the illegal income.

Where the said act constitutes a crime, it/he shall be removed to the judicial organ and punished according to law for its/his criminal liability.

#### Article 23

Deliberately facilitating an act of passing off patent by way of warehouse storage, transport, concealment, shall be punished and fined according to, mutatis mutandis, Article 22 of the Provisions.

#### Article 24

In any one of the following events, an interested party shall be imposed a lighter or reduced administrative punishment:

- (1) Where one actively dispels or reduces harmful consequences caused by an act of passing off patent;
- (2) Where one performs a meritorious service by cooperating with the administrative authority for patent affairs in investigating the act of passing off patent; and
- (3) Where any other circumstances require for imposition of less severe or reduced punishment according to law.

#### Article 25

Where an act of passing off patent is of a vile nature, its consequence seriously harmful, and necessary to be severely punished, the leading officials of the administrative authority for patent affairs

shall collectively conduct discussions and make decision pertaining to the case.

#### Article 26

Confiscated signs of passed-off patent shall be destroyed.

Where the signs of passed-off patent are difficult to be detached from products, the products shall be destroyed or dealt with by other measures; where the said signs are detachable from products, an order shall to be issued to destroy the signs.

The above-mentioned two sub-provisions can be executed by a related department entrusted by the administrative authority for patent affairs, and the resulting expenses shall be borne by the entity or individual committing the act of passing off patent.

#### Article 27

An interested party shall pay the fine at a designated bank within 15 days starting from its/his receipt of the punishment decision of the act of passing off patent; where the fine is not paid at the expiry of the prescribed period, an additional fine of 3% of the amount of the original fine shall be imposed daily, or the sealed-up products be auctioned or sold to pay for the fine according to law and regulations.

#### Article 28

Where an entity or individual punished and fined is not satisfied with the punishment decision imposed by the administrative authority for patent affairs, it/he may institute proceedings in the people's court within three months starting from the effective date thereof.

#### Article 29

Execution of the punishment decision shall not be discontinued during the proceedings, but in one of the following events, the execution shall be stopped:

- (1) Where the administrative authority for patent affairs holds that it is necessary to stop the execution;
- (2) Where the people's court rules that the execution be stopped; and
- (3) Where the execution shall be stopped according to legal provisions.

#### Article 30

Where a punished entity or individual does not institute proceedings in the people's court, nor does it/he fulfill the punishment decision the administrative authority for patent affairs may apply the people's court for compulsory execution.

#### Article 31

In respect of the same act by an interested party of passing off patent, the administrative authority for patent affairs shall not impose fine twice or more times for administrative punishment.

#### Article 32

The administrative authority for patent affairs shall rectify any mistakes it has made in its imposition of punishment.

#### Article 33

The staff members of the administrative authority for patent affairs shall enforce the law impartially, without power abuse authority, irregularities for favoritism, bribery and corruption, and anyone committing these offences shall be punished with the administrative disciplinary measure; where the circumstances are so serious as to constitute a crime, the judicial organs shall impose criminal liabilities according to law.

#### Article 34

The administrative authority for patent affairs shall perform, without any unlawful interference, its functions and authorities according to law. Refusal and impediment of the performance of functions and authorities by the staff members of the administrative authority for patent affairs shall be punished by the public security organization according to the Regulations of the People's Republic of China on Punishments in Public Order and Security Administration. The circumstances that are so serious as to constitute a crime shall be punished by judicial organs for criminal liability.

### Chapter 5 Supplementary Provisions

#### Article 35

In its investigation and handling of acts of passing off patent, the administrative authority for patent affairs shall apply and put on file the relevant legal instruments formulated by the State Intellectual Property Office.

#### Article 36

The State Intellectual Property Office shall be responsible for the interpretation of the Provisions.

#### Article 37

The Provisions shall enter into force on 1 February 1999.



