

Publication and Implementation of Protection Measures for Intellectual Property Rights during Exhibitions

The Protection Measures for Intellectual Property Rights during Exhibitions (hereinafter referred to as the Measures) was promulgated jointly by the Ministry of Commerce, the State Administration for Industry and Commerce, the State Bureau of Copyright and the State Intellectual Property Office on January 10, 2006, and was effective as of March 1, 2006.

The Measures are divided into seven chapters and thirty five rules, providing provisions on accepting and handling complaints regarding the IPR infringement, protecting patent, trademark and copyright during the exhibition and other relevant legal liabilities.

1. Application Objects of the Measures

The 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.

2. Exhibition Sponsors' Rights and Obligations

The exhibition sponsor shall safeguard the legitimate rights and interests of IPRs holders legally and intensify the IPRs protection for participants of the exhibition as well as the examination of the IPRs status of the items on exhibition.

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.

3. Office in charge of IPRs Complaints during Exhibitions

Where an exhibition lasts for three 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 authority at the locality of the exhibition shall dispatch its personnel to station therein and handle the case of infringement in accordance with law.

4. Procedures of Lodging a IPRs Complaint during Exhibitions

A IPRs holder may file a complaint to the office in charge of IPRs complaints during an exhibition or to the IPRs administrative authority. 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 reasons and evidences for any suspected infringement; and

(4) where an agent is entrusted to file a complaint, the relevant Power of Attorney shall be submitted.

After receiving the complaint materials, the office in charge of IPRs complaints during an exhibition shall transfer it to the relevant IPRs administrative authority within 24 hours.

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.

The local IPRs administrative authority may, according to the exhibition period, designate the time limit for the relevant respondent to respond a complaint or claim.

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

5. Legal Liabilities

Where the infringement of IPRs is found by the local IPRs administrative authority on the complaint against IPR infringement, it may punish the exhibitor as the accused in collaboration with the administrative department of exhibitions according to law.

Where the infringement of patent rights for an invention or an utility model is found by the local IPRs administrative authority on the request for handling the infringement disputes on the patent right for the invention or the utility model, according to the Patent Law, the authority shall make decision to order the exhibitor to stop its or his infringement act, to withdraw all infringing items on display, to destroy the publicity materials introducing to infringing items on display and to change the exhibition board of infringing items.

Where the infringement to the design patent right is found by the local IPRs administrative authority, it shall make a decision to order the accused exhibitor to stop its or his infringement act and to withdraw the infringing items from the exhibition.

For the act passing off any other's patent as his own or the act passing off any non-patented product as patented product, during an exhibition, the local IPRs administrative authority shall make punishment on the passing off act according to the provisions of Articles 58 and 59 of the Patent Law.

Where infringement of trademark right is found by the local industry and commerce administrative authority, the authority shall give a punishment according to the relevant provisions of the Trademark Law and the Regulation for the Implementation of the Trademark Law, etc.

Where infringement of copyright is found by the local administrative authority for copyright, the authority shall give punishment according to the provisions of Article 47 of the Copyright Law, the relevant infringing items on display as well as publicity materials introducing to the infringing items on display shall be confiscated and destroyed, and the exhibition boards introducing to the infringing items shall be changed.

Where any infringement of an exhibitor is found, the administrative department of exhibitions may make an announcement to this exhibitor in accordance with the law. If the infringement acts of the exhibitor were found more than twice consecutively, the exhibition sponsor shall prohibit said exhibitor to take part in the next exhibition.

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 next relevant exhibition in accordance with the law, as the case might be.

Contributed compliments of CCPIT Patent and Trademark Law Office, all rights reserved, www.ccpit-patent.com.cn