

<p>《最高人民法院关于修改〈最高人民法院关于审理专利纠纷案件适用法律问题的若干规定〉的决定》已于2015年1月19日由最高人民法院审判委员会第1641次会议通过，现予公布，自2015年2月1日起施行。</p> <p style="text-align: right;">最高人民法院 2015年1月29日</p>	<p><i>Decision of the Supreme People's Court on Revising the Certain Provisions of the Supreme People's Court on Issues Concerning the Application of Law in the Hearing of Patent Dispute Cases</i> was approved by No. 1641 Conference of the Adjudication Committee of the Supreme People's Court on January 19, 2015, now published, and will come into effect on February 1, 2015.</p> <p style="text-align: right;">The Supreme People's Court January 29, 2015</p>
<p>最高人民法院关于修改《最高人民法院关于审理专利纠纷案件适用法律问题的若干规定》的决定 (2015年1月19日最高人民法院审判委员会第1641次会议通过)</p>	<p>Decision of the Supreme People's Court on Revising the Certain Provisions of the Supreme People's Court on Issues Concerning the Application of Law in the Hearing of Patent Dispute Cases (Approved by No. 1641 Conference of the Adjudication Committee of the Supreme People's Court on January 19, 2015)</p>
<p>根据最高人民法院审判委员会第1641次会议决定，对《最高人民法院关于审理专利纠纷案件适用法律问题的若干规定》作如下修改：</p>	<p>According to No. 1641 Conference Decision of the Adjudication Committee of the Supreme People's Court, the following revisions are made to the <i>Certain Provisions of the Supreme People's Court on Issues Concerning the Application of Law in the Hearing of Patent Dispute Cases</i>:</p>
<p>一、将第五条第二款修改为：“侵权行为地包括：被诉侵犯发明、实用新型专利权的产品的制造、使用、许诺销售、销售、进口等行为的实施地；专利方法使用行为的实施地，依照该专利方法直接获得的产品的使用、许诺销售、销售、进口等行为的实施地；外观设计专利产品的制造、许诺销售、销售、进口等行为的实施地；假冒他人专利的行为实施地。上述侵权行为的侵权结果发生地。”</p>	<p>1. Paragraph 2, Article 5 was revised as follows: Places where infringement takes place include: places making, using, offering to sell, selling, or importing the product of the accused infringing patent or a utility model; places using a patented process, or where the product is directly obtained by making, using, offering to sell, selling, or importing the patented process; places making, offering to sell, selling or importing a product incorporating a patented design; places where act of passing off patent takes place. Places where result of the said infringing acts takes place.</p>
<p>二、将第八条第一款修改为：“对申请日在2009年10月1日前（不含该日）的实用新型专利提起侵犯专利权诉讼，原告可以出具</p>	<p>2. Paragraph 1, Article 8 was revised as follows:</p>

<p>由国务院专利行政部门作出的检索报告；对申请日在2009年10月1日以后的实用新型或者外观设计专利提起侵犯专利权诉讼，原告可以出具由国务院专利行政部门作出的专利权评价报告。根据案件审理需要，人民法院可以要求原告提交检索报告或者专利权评价报告。原告无正当理由不提交的，人民法院可以裁定中止诉讼或者判令原告承担可能的不利后果。</p>	<p>The plaintiff may submit a search report issued by the patent administrative authority of the State Council for a patent infringement lawsuit based on utility model patent filed before October 1, 2009. The plaintiff may submit a patentability assessment report issued by the patent administrative authority of the State Council for a patent infringement lawsuit based on utility model patent and design patent filed on or after October 1, 2009. As needed by adjudication of the lawsuit, the people's court may order the plaintiff to submit a search report or a patentability assessment report. Where a plaintiff fails to comply with the court order without a good cause, the people's court may suspend the legal proceedings or order the plaintiff to bear corresponding negative consequences.</p>
<p>三、将第九条第一项修改为：“（一）原告出具的检索报告或者专利权评价报告未发现导致实用新型和外观设计专利权无效的事由的；”</p>	<p>3. Paragraph 1, Article 9 was revised as follows: (1) Where a search report or a patentability assessment report submitted by the plaintiff fails to discovery facts that will invalidate the patent right of utility model and design;</p>
<p>四、将第十七条修改为：“专利法第五十九条第一款所称的‘发明或者实用新型专利权的保护范围以其权利要求的内容为准，说明书及附图可以用于解释权利要求的内容’，是指专利权的保护范围应当以权利要求记载的全部技术特征所确定的范围为准，也包括与该技术特征相等同的特征所确定的范围。</p>	<p>4. Article 17 was revised as follows: “The extent of protection of the patent right for invention or utility model shall be determined by the terms of the claims. The description and the appended drawings may be used to interpret the content of the claims” recited in Paragraph 1, Article 59 of the Chinese Patent Law means the scope of protection of a patent right shall be determined by the scope defined by all the technical features recited in the claims, including the scope defined by features equivalent to the above recited technical features.</p>
<p>等同特征，是指与所记载的技术特征以基本相同的手段，实现基本相同的功能，达到基本相同的效果，并且本领域普通技术人员在被诉侵权行为发生时无需经过创造性劳动就能够联想到的特征。</p>	<p>Features of equivalents means features that use substantially the same method, realize substantially the same function, and achieve substantially the same result as the recited technical features; and, at the same time, can be conceived by the ordinary person skilled in the art when the infringing activity occurs without incurring of inventive labor.</p>

<p>五、将第十八条修改为：“侵犯专利权行为发生在2001年7月1日以前的，适用修改前专利法的规定确定民事责任；发生在2001年7月1日以后的，适用修改后专利法的规定确定民事责任。”</p>	<p>5. Article 18 was revised as follows:</p> <p>Where any act of patent infringement takes place before 1 July 2001, the civil liability under the Patent Law before this revision shall apply; where such act takes place after 1 July 2001, the provisions of the revised Patent Law shall apply to determine the civil liability.</p>
<p>六、将第十九条修改为：“假冒他人专利的，人民法院可以依照专利法第六十三条的规定追究其民事责任。管理专利工作的部门未给予行政处罚的，人民法院可以依照民法通则第一百三十四条第三款的规定给予民事制裁，适用民事罚款数额可以参照专利法第六十三条的规定确定。”</p>	<p>6. Article 19 was revised as follows:</p> <p>The people’s court may pursue the civil liability against an entity passing off patent of others under Article 63 of the <i>Chinese Patent Law</i>. Where the patent administrative authority did not render administrative penalties against the entity, the people’s court may render civil penalties under Paragraph 3, Article 134 of the <i>General Principles of Civil Law</i> and determine the amount of civil fines by referring to Article 63 of the <i>Chinese Patent Law</i>.</p>
<p>七、删除第二十条第一款，第二款改为第一款并修改为：“专利法第六十五条规定的权利人因被侵权所受到的实际损失可以根据专利权人的专利产品因侵权所造成销售量减少的总数乘以每件专利产品的合理利润所得之积计算。权利人销售量减少的总数难以确定的，侵权产品在市场上销售的总数乘以每件专利产品的合理利润所得之积可以视为权利人因被侵权所受到的实际损失。”</p>	<p>7. Paragraph 1, Article 20 was deleted, Paragraph 2, Article 20 was revised to Paragraph 1 and as follows:</p> <p>“Actual lost suffered by the patentee due to infringement” recited in Article 65 of the <i>Chinese Patent Law</i> can be calculated by considering the total number of lost sale volume of the patented product due to the infringement, multiplied by the reasonable profit of each patented product. Where the total number of lost sale volume of the patented product is difficult to be determined, the product of total number of sale volume of the infringing product multiplied by reasonable profit of each patented product can be deemed as the actual lost suffered by the patentee due to the infringement.</p>
<p>第三款改为第二款，修改为“专利法第六十五条规定的侵权人因侵权所获得的利益可以根据该侵权产品在市场上销售的总数乘以每件侵权产品的合理利润所得之积计算。侵权人因侵权所获得的利益一般按照侵权人的营业利润计算，对于完全以侵权为业的侵权人，可以按照销售利润计算。”</p>	<p>Paragraph 3 was revised to Paragraph 2 and as follows:</p> <p>Under Article 65 of the <i>Chinese Patent Law</i>, “profit obtained by the infringer by infringement” can be calculated by calculating the product of total number of the infringing product sold in the market multiplied by reasonable profit of each infringing product. The profit obtained by the infringer generally can be calculated</p>

	by considering the operating profit of the infringer's business, or by considering sales profit where the infringer operates the business solely based on infringement.
<p>八、将第二十一条修改为：“权利人的损失或者侵权人获得的利益难以确定，有专利许可使用费可以参照的，人民法院可以根据专利权的类型、侵权行为的性质和情节、专利许可的性质、范围、时间等因素，参照该专利许可使用费的倍数合理确定赔偿数额；没有专利许可使用费可以参照或者专利许可使用费明显不合理的，人民法院可以根据专利权的类型、侵权行为的性质和情节等因素，按照专利法第六十五条第二款的规定确定赔偿数额。”</p>	<p>8. Article 21 was revised as follows:</p> <p>Where the lost suffered by the patentee and the profit obtained by the infringer is difficult to determine, but where there are patent licensing fees for references, the people's court may reasonably determine the monetary damage by referring to multiples of the patent licensing fees, while consider factors including types of patent right, nature and circumstance of infringing activities, and the nature, scope, and time of the patent licensing, etc. Where no patent licensing fees can be referred to, or the patent licensing fees are obviously unreasonable, the people's court may determine the monetary damage under Paragraph 2, Article 65 of the Chinese Patent Law, while consider factors including types of patent right, and nature and circumstance of infringing activities, etc.</p>
<p>九、将第二十二条修改为：“权利人主张其为制止侵权行为所支付的合理开支的，人民法院可以在专利法第六十五条确定的赔偿数额之外另行计算。”</p>	<p>9. Article 22 was revised as follows:</p> <p>Where the patentee claims for reasonable cost spend prohibiting infringing activities, the people's court may calculate the monetary amount in addition to monetary damage determined under Article 65 of the <i>Chinese Patent Law</i>.</p>
<p>十、将第二十四条修改为：“专利法第十一条、第六十九条所称的许诺销售，是指以做广告、在商店橱窗中陈列或者在展销会上展出等方式作出销售商品的意思表示。”</p>	<p>10. Article 24 was revised as follows:</p> <p>“Offer for sale” recited in Article 11 and Article 69 of the <i>Chinese Patent Law</i> refers to showing of intention of sale of products by means of advertising, displaying in shop window, or displaying in trade fair, etc.</p>
<p>根据本决定，将《最高人民法院关于审理专利纠纷案件适用法律问题的若干规定》作相应修改，重新公布。</p>	<p>According to this decision, the <i>Certain Provisions of the Supreme People's Court on Issues Concerning the Application of Law in the Hearing of Patent Dispute Cases</i> was revised accordingly and published <i>de novo</i>.</p>