

# **Standardization Administration of The People's Republic of China**

Biao Wei Ban Gong Er Han [2009] No. 107

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## **Letter about Seeking Opinions on the Regulations for the Administration of the Formulation and Revision of Patent-Involving National Standards (Interim) (Exposure Draft)**

Quality and technology supervision bureau of all provinces, autonomous regions, municipalities directly under the central government, cities at sub-provincial level, cities specifically designated in state plan and Xinjiang Production and Construction Corps, related ministries and commissions of the State Council, trade associations, general office (office) of group corporations, Certification and Accreditation Administration of China, related departments (bureaus) of General Administration of Quality Supervision, Inspection and Quarantine of China, General Office of Supreme People's Court, China National Institute of Standardization, China National Administration for Code Allocation to Organizations, GS1 China, China Association for Standardization and all directly subordinate National Professional Standardization Techniques Commissions:

With a view to properly handling the patent issues involved in national standards, standardizing the disposal of patents involved in the process of formulating and revising national standards, encouraging independent innovations, promoting the rational adoption of new technologies in national standards, protecting the rights and interests of social public, patentees and related right holders and ensuring the effective implementation of national standards, the Standardization Administration of China ("SAC") organized the drafting of the Regulations for the Administration of the Formulation and Revision of Patent-Involving National Standards (Interim) (Exposure Draft). We now seek your opinions and would like you to study the draft carefully to submit the revision opinions you may have to SAC before November 30, 2009.

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## **Regulations for the Administration of the Formulation and Revision of Patent-Involving National Standards (Interim)**

(Exposure Draft)

### **Chapter I General Provisions**

Article 1 With a view to properly handling the patent issues involved in national standards, standardizing the formulation and revision of national standards, encouraging independent innovations, promoting the rational adoption of new technologies in national standards, protecting the rights and interests of social public, patentees and related right holders and ensuring the effective implementation of national standards, these regulations (“Regulations”) are hereby formulated in accordance with the the Standardization Law of the People's Republic of China, the Patent Law of the People’s Republic of China, the Measures for Administration of National Standards and other relevant laws and regulations.

Article 2 These Regulations are applicable to the disposal of patents involved in the process of formulating and revising national standards.

Article 3 A patent technology involved in a national standard shall be the technology essential for implementation thereof and subject to no substantial reasons refusing the involvement of the patent.

### **Chapter II Disclosure of Patent Information**

Article 4 The Professional Standardization Techniques Commissions (“PSTC”) or a unit in charge (“UIC”) shall disclose the proposal on a patent-involving project in a manner familiar to the public.

Article 5 The organizations or individuals participating in the formulation and revision of a national standard shall promptly disclose the relevant patents they are aware of to PSTC or UIC and provide it with patent information and relevant evidentiary materials.

Article 6 The organizations or individuals not participating in the drafting of a national standard, but are aware of the patent information related thereto may inform in writing PSTC or UIC about the patent information at any stage of the formulation or revision thereof.

Article 7 When a patent-involving national standard is submitted for approval, PSTC or UIC shall verify the authenticity of the patent information table and the relevant evidentiary materials, and then submit the written materials proving the authenticity

thereof together with the statement on patent information to the national administration department of standardization.

Article 8 A patentee and its affiliate taking part in the drafting of a standard will be deemed as having granted a free license by failing to make disclosure as required above and shall bear due legal responsibility for the losses caused to the formulation or implementation of a national standard by their purposeful concealment of the patent information.

### **Chapter III Statement on Licensing of Patent Right**

Article 9 When a patent is involved during the formulation and revision of a national standard, PSTC or UIC shall obtain in time the patentee's irrevocable written statement on patent licensing.

The statement shall include the following, from which the patentee shall select one item:

- (1) The patentee agrees to license, on a free-of-charge, reasonable and nondiscriminatory basis, to any organization and individual to implement the patent when implementing the national standard;
- (2) The patentee agrees to license, on a reasonable and nondiscriminatory basis, any organization and person to implement the patent when implementing the national standard at a price significantly lower than the normal royalties;
- (3) The patentee does not agree to license patent in either of the two ways listed above.

If the patentee has selected (3) above, the standard shall not contain any provisions based on the patent.

Article 10 The written patent licensing statement shall be included in the materials submitted for approval of a national standard. The approval for release of a draft national standard that involves a patent without obtaining a written licensing statement thereof shall be temporary withheld.

Article 11 Where a released national standard is found to involve a patent without obtaining a written licensing statement thereof, PSTC or UIC shall promptly obtain the patentee's licensing statement thereof and, meanwhile, report the same to the national administration department of standardization. If the patentee refuses to make the above statement, national administration department of standardization shall revise the standard.

### **Chapter IV Special Requirements for Involvement of Patent in Compulsory National Standards**

Article 12 In principle, a compulsory national standard shall not involve patent.

Article 13 For a compulsory national standard that indeed needs to involve a patent, the patentee shall grant license free of charge or the national administration department of standardization shall request the related departments to consult with the patentee about disposal of the patent. If the related departments fail to agree with the patentee on the disposal of patent, the approval for release of the national standard will be temporary withheld or a compulsory license will be granted according to law.

Article 14 Before patent-involving compulsory national standard is approved for release, the national administration department of standardization shall disclose the full text of the standard and the known patent information to public for a 30-day period. Any organization or individual may give a written notice about the other patent information they know to the national administration department of standardization.

## **Chapter V. Supplementary Provisions**

Article 15 When an international standard is adopted in the formulation of a national standard, all possible efforts shall be made to gain a full understanding of the information on the patent involved and the patent right shall be disposed of as specified in Chapter II and Chapter III.

Article 16 Patent applications that have been accepted shall be disposed of as specified in Chapter II and Chapter III.

Article 17 The patent information disclosure and the licensing statement shall be implemented as required by the Rules for Disposal of the Patents Involved in National Standards.

Article 18 The relevant patent information in a national standard shall be compiled in compliance with the provisions of GB/T 1 Guide to Standardization Work.

Article 19 If patent is involved in the formulation and revision of industry standards and local standards, these regulations may be referenced and followed.

Article 20 The Standardization Administration of China is responsible for the interpretation of these Regulations.

Article 21 These Regulations shall be implemented from \_\_\_\_\_, 200\_\_.

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Office of Standardization Administration of China

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