



January 18, 2013

Mr. Zhang Chengyu
Standardization Administration
of the People's Republic of China (SAC)
No. 9 Madian East Road
Haidian District
Beijing, 100088
P. R. China

RE: IPO Comments on SAC Regulatory Measures on National Standards Involving Patents (Interim)

Dear Mr. Zhang:

Intellectual Property Owners Association (IPO) respectfully submits its comments to the Standardization Administration of the People's Republic of China (SAC) on the *Regulatory Measures on National Standards Involving Patents (Interim)* issued December 19, 2012 (2012 Measures). IPO applauds SAC for changes made to align the 2012 Measures with international practices and looks forward to continued dialogue on how they will be implemented in practice. In this regard, and as discussed in detail below, there are a few areas where we believe clarification might help potential participants understand their responsibilities.

Introduction

IPO is an international association, based in the United States, of more than 200 companies and a total of 12,000 individuals involved in the association either through their companies or law firms or as individual members. Founded in 1972, IPO represents the interests of all owners of intellectual property covering all areas of technology, many of whom are involved in various formal and informal standards setting organizations around the world. IPO members also file approximately 30 percent of the patent applications filed in the United States Patent and Trademark Office by U.S. nationals and a significant percentage of applications at the State Intellectual Property Office (SIPO). A number of Chinese law firms are also IPO members.

Our members regularly work with diverse issues involving patents, copyrights, trade secrets, standards, and other fields involving and affecting intellectual property. They are active licensors and licensees of intellectual property rights and understand day-to-day considerations that drive licensing transactions. IPO members license intellectual property to generate a return on the owner's research and development investment while allowing the licensee recipient to avoid research and development costs or meet market needs not supplied

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by the intellectual property owner. In this regard, IPO members recognize the need to define principles that achieve the optimum balance between the rights of intellectual property owners and other industry standard stakeholders.

In recent years, IPO has observed and constructively commented on proposals with intention to achieve the optimum balance in standards setting activities. For example, IPO shared concerns about provisions of the *Draft National Standards Involving Patents* that SAC released November 2, 2009. IPO is pleased that the 2012 Measures appear to have addressed several of these concerns thereby making the 2012 Measures more aligned with international practices as seen for example in the ISO/IEC/ITU Common Patent Policy. Our members are particularly pleased that the 2012 Measures have adopted reasonable and non-discriminatory (RAND) licensing consistent with international practice.

In our review of the 2012 Measures, we noticed a few areas that could be subject to multiple interpretations. This could hinder standardization in China due to lack of understanding. IPO respectfully notes that portions of the following 2012 Measures were unclear to us.

1. Article I, Paragraph 4: Patents involved in national standards shall be essential patents, which would be required to implement the standards.

IPO understands that the term “required” is limited to that which is “technically” required, and that the term “patents” refers to those patents that are filed or issued in China. We would very much appreciate any guidance SAC might provide or publish that would help us fully understand this provision.

2. Article II, Paragraph 1: Organizations or individuals participating in the formulation or revision of national standard shall timely disclose to the technical committee or the responsible entity the essential patents known to them, and provide patent information and corresponding verification materials thereof.

IPO understands that the definition of “known to them” is limited to those patents known to be essential by the responsible participant without requiring the participant to perform patent searches or to speculate about third party patents. IPO would be grateful to SAC to know whether our understanding is correct.

IPO is also unclear about what patent information and verification materials would be helpful to obtain from participants, but not required, and what verification materials would be required. It would be most helpful for IPO and other interest parties to understand what differences, if any, exist between these requirements and the practices of international standards organizations.

- 3. Article II, Paragraph 4: Organizations or individuals participating in the formulation or revision of national standards shall be legally liable for their failure to follow the aforementioned requirements to disclose the essential patents held by them.**

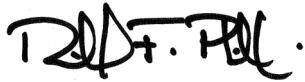
IPO understands that this provision simply means that failure to disclose may be a breach of the developing organizations' written policies and may be a violation of Chinese law. IPO would sincerely appreciate any guidance SAC could provide or publish if our understanding is incorrect.

Supplementary Rules

IPO would be very grateful for an opportunity to review, through a public comment period, the specific disclosure and patent licensing declaration requirements set by GB/T "Special Procedures for the development of Standards Part 1: Standard Related to Patents" and the requirements for patent information in the rules set by GB/T 1 "Directives for Standardization." IPO believes such a review may help our members better understand the 2012 Measures and what is expected of potential standardization participants.

Thank you very much for giving us the opportunity to comment on the 2012 Measures.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Phillips".

Richard Phillips
President