China Releases Administrative Adjudication Measures for Major Patent Infringement Disputes Effective June 1, 2021

Friday, May 28, 2021

On May 28, 2021, China’s National Intellectual Property Administration (CNIPA) has released the Administrative Adjudication Measures for Major Patent Infringement Disputes (行政裁决办法). Administrative adjudication provides an alternative to litigation that can be much faster and less expensive than civil litigation but doesn’t provide for damages. The Measures set a deadline of 3 months to complete the adjudication from the date of filing. The Measures go into force June 1, 2021.
Per Article 3 of the Measures,

Any of the following situations is a major patent infringement dispute:

(1) Involving major public interests;

(2) Seriously affecting the development of the industry;

(3) Major cases involving cross-provincial administrative regions;

(4) Other patent infringement disputes that may cause significant impact.

Adjudication moves fast with tight deadlines per Article 10,

The CNIPA shall send a copy of the adjudication request and its attachments to the respondent within 5 working days from the date of filing the case, requesting the respondent to submit a statement of defense within 15 days from the date of receipt, and provide duplicates equal to the number of requesters. If the respondent fails to submit a statement of defense within the time limit, the handling of the case will not be affected.

Where the respondent submits the statement of defense, the CNIPA shall forward a copy of the statement of defense to the requester within 5 working days from the date of receipt.

Only a minimum of 5 working days notice is required for oral hearings.

Per Article 22, CNIPA is to complete adjudication within 3 months from the filing date of the case although extensions are available. An initial extension will be for one month. If the adjudication cannot be completed within the extension, an additional ‘reasonable’ extension can be given to complete the adjudication.

Per Article 23, the only remedy available is an injunction (no damages).

Appeals can be lodged with a People’s Court (presumably the Beijing Intellectual Property Court).
within 15 days of the ruling but enforcement of an injunction will not be suspended during the appeal process.

The full text is available here (Chinese only).

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