

The Supreme People's Court
"Guiding Opinions on Trial of Intellectual Property Disputes Related to E-commerce Platforms"
(Draft for Public Comments): Submission of comments

Organization: International Association for the Protection of Intellectual Property of Japan

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About	Parts of proposed correction (indicated in red)	Reason for correction
9	<p>9. A statement of non-infringement submitted by the operator on platform to the e-commerce platform operator, under Article 43 of the E-Commerce Law, shall generally include valid information on the operator on platform, correctly identifiable information on products or services against which to ask for the termination of measures, prima facie evidence of the non-existence of infringing acts including that of the legitimate use, specific measures of which to ask the e-commerce platform for the termination, and a guarantee of the truthfulness of the statement. The statement must be submitted in writing.</p> <p style="color: red;">Before forwarding the statement to the IPR holder, the e-commerce platform operator shall perform preliminary checking of the truthfulness of its content and treat it as a statement only when there is no obvious doubt about its truthfulness.</p> <p>If the statement is related to a patent right, the e-commerce platform operator may ask the operator on platform to submit materials for comparative explanation of the technical or design features etc.</p>	<p>Actually, operators on platform often submit a counter-argument, saying that they do not commit any infringing acts.</p> <p>However, not a few of such counter-arguments contain false information or cannot be regarded as counter-arguments. If they are treated as statements in the same manner, an excessive burden could be imposed on the competent authority, the court, and the right holders.</p> <p>For this reason, we think that the e-commerce platform operator should perform preliminary checking of the truthfulness of the prima facie evidence and treat it as a statement only when there is no obvious doubt about its truthfulness.</p>
11	<p>11. If the e-commerce platform operator forwards the statement of non-infringement submitted by the operator on platform to the IPR holder, and the e-commerce platform operator does not receive a notice of receipt by the People's Court or the competent authority of a complaint to be filed by the IPR holder within 25 business days (or another number of business days calculated by adding a reasonable period if the IPR holder is a foreign entity and makes a request for an extension of the limit by that reasonable period) from the arrival of the forwarded statement, the e-commerce platform operator must immediately terminate the measures taken, including the removal of links, blocking, etc.</p>	<p>If the IPR holder is a foreign entity, they need to issue a power of attorney (POA) to their counsel, and go through the notarization and legalization procedures. Since it may take a certain period (longer than 25 business days) to perform these procedures and send the documents by</p>

		international mail, we suggest that you add a provision for an extension of the limit for foreign entities.
16	16. Under any of the following circumstances, the People's Court may find that the e-commerce platform operator could have been aware of the existence of the infringing act: The e-commerce platform operator did not fulfill the legal obligations to establish rules on the protection of intellectual property rights or to check whether the operators on platform were qualified for the operation; did not check on certification of operators' rights to indicate "Flagship shop," "Franchised dealer," or other designations equivalent thereto; or did not take effective technical measures to filter or block any links to infringing goods that contain such characters as "Highly accurate fake brands" and "Imitations," or any links to infringing goods that are put on display again after the establishment of a complaint.	A set of designations to be used are different from platform to platform. Therefore, we suggest that there should not be only "Flagship shop" and "Franchised dealer" but also other equivalent designations.