Content

Title：	The Program for Hearing Patent Invalidation Cases Ch
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Content：

1. Grounds and purposes

1.1 The Program for Hearing Patent Invalidation Cases are instituted by the Taiwan Intellectual Property Office (hereinafter referred to as “TIPO”) of the Ministry of Economic Affairs, pursuant to Article 107(2) and Articles 54 through 66 of the Administrative Procedure Act on hearing proceedings for patent invalidation cases.

1.2 A hearing is held in order to afford the parties involved in a patent invalidation case an opportunity to present relevant evidence, legal opinions and conduct mutual inquiries, to help the examiners in charge to render a decision on the theoretical and empirical basis after taking into account all of the investigated facts and pieces of evidence, as well as the results of mutual inquiries.

2. Terminologies Defined:

2.1 "Parties" refer to the patentee of a patent in dispute and the invalidation requester in a patent invalidation case.

2.2 "Interested parties" refer to any of the following other than the parties in a patent invalidation case:

(1) The party in a lawsuit involving a patent in dispute.

(2) The licensee or pledgee of a patent in dispute.

(3) The party whose rights or interests are compromised by the existence of the right to a patent in dispute.

2.3 “Agent” refers to the patent attorney, patent agent or lawyer appointed by the aforementioned parties or interested parties involved in a patent invalidation case.

2.4 "Presiding official" refers to a person appointed from among the examiners of handling invalidation of a patent in dispute.

3. Holding a hearing

3.1 If either party in a patent invalidation case finds it necessary to conduct mutual inquires with the other party or to question witnesses or expert witnesses, he/she shall submit a request containing specific reasons for holding a hearing. The hearing may be held if TIPO deems it necessary.

3.2 TIPO may hold a hearing ex officio if it deems it necessary.

4. Forwarding relevant documents or evidence

Prior to publicizing a hearing, TIPO shall forward relevant documents or evidence submitted by one party to the counter party. After the hearing is publicized, the party that continues to submit documents or evidence shall forward subsequent submissions to the counter party and TIPO.

5. Preliminary hearing

5.1 To facilitate the unobstructed progression of the hearing, TIPO may hold a preliminary hearing on account of case complexity and notify the parties to be prepared for the following:

(1) Discuss and decide on the process of the hearing;

(2) Ascertain the admissibility of relevant documents and evidence;

(3) Define the issues; and

(4) Other matters concerning the hearing.

5.2 Minutes shall be taken of the preliminary hearing.

6. Notification and publication of a hearing

6.1 Thirty (30) days prior to the hearing, TIPO shall serve upon the parties a written notice, giving therein the following matters, and publicizes the notice at its branch offices or on its website:

(1) Subject matter and grounds of the hearing;
(2) Names or titles of the parties;
(3) Date and venue of the hearing;
(4) Main procedures of the hearing;
(5) That the party may appoint an agent;
(6) During the hearing, the parties are allowed to only express opinions but not present new means of attack or defense. With the permission of the presiding official, the parties may question the witnesses, expert witnesses, the other parties or their agents;
(7) If any of the parties fails to appear after being legally notified, the hearing may proceed; and;
(8) The rationales for making the hearing proceeding open to the public or not.

6.2 TIPO shall notify witnesses or expert witnesses prior to the hearing if it deems the parties' request of questioning them at the hearing necessary.

6.3 The parties wishing to change the date shall do so ten (10) days prior to the set date and file a request containing specific reasons. If the reasons are deemed justifiable, TIPO shall allow such request and notify the parties of the change. If not, TIPO shall notify the party filing the request that the hearing will be held as scheduled.

6.4 The parties considering making the hearing proceedings open to the public is likely to against the public interest, or to cause material harm to their interest may file a request containing specific reasons thereof within ten (10) days following the receipt of the hearing notice. If the reasons are deemed justifiable, TIPO shall allow such request and notify the parties that the proceeding will not be held in public. If not, TIPO shall notify the party filing the request that the proceeding will still be held in public.

6.5 The interested parties wishing to attend the hearing should file a request with relevant supporting documents within twenty (20) days after the hearing is publicized.

6.6 TIPO may ex officio reschedule or cancel a hearing. Where there is a change of date, TIPO shall reissue a notice and have it published.

6.7 The party considering the examiners in charge to be obliged by statutory recusal shall file a request form containing specific grounds within ten (10) days following the receipt of a hearing notice.

7. Decision not holding a hearing

If TIPO considers the reasons for requesting a hearing to be obviously unrelated to the case or the merits of the case to be sufficiently clear, it shall then notify the requester(s) or state the reasons in its written decision for not holding the hearing.

8. Duties of the presiding official

In conducting the hearing, the presiding official shall maintain an unbiased and fair position. During a hearing, the presiding official may perform the following duties:

(1) To inquire of the party and other persons present at the hearing with respect to questions of fact or law;
(2) To delegate ex officio or upon application of the party any other related authority to carry out necessary inquisition;
(3) To require by notification the appearance of any witness or expert witness;
(4) To require by notification or to allow ex officio or upon application the intervention by any affected party into the hearing proceeding;
(5) To permit the party or any other person present at the hearing to raise questions or to make statement;
(6) To forbid the party or any other person present at the hearing to make statement in order to avoid delay of the hearing proceeding and to order the expulsion of any such person if the hearing proceeding is seriously obstructed thereby;
(7) The party which comes late shall not attend the hearing. However, if the presiding

official deems it necessary to clarify the case, such a person may be allowed to attend the hearing;
(8) To begin, postpone or conclude the hearing proceeding as the case may require notwithstanding the failure of all or some of the parties to appear without good cause;
(9) To admit the statement contained in the relevant documents presented by the party at the preliminary hearing as his statement made at the hearing;
(10) To determine before the end of the hearing the date and place where further hearing will be held if he deems it necessary;
(11) To suspend or reschedule the hearing ex officio or upon application by the party in the event of the occurrence of an act of God or other incident preventing the conduct of the hearing; and
(12) To take any other actions as may be necessary for the unobstructed progression of the hearing proceeding.

9. Hearing proceeding
9.1 The hearing shall be held on the date publicized and at the venue designated by TIPO.
9.2 The hearing shall only be attended by examiners, the parties or their agents, as well as witnesses and expert witnesses who TIPO deems necessary to attend. However, the interested parties with approved requests for attendance and the general public allowed to sit in may also attend the hearing. The parties referred to in the preceding paragraph may, if they are juristic persons, appoint their employees to attend the hearing. Agents may appoint those who have expertise in patent invalidation to attend the hearing.
9.3 The hearing proceeding in principle shall be held in public. However, the presiding official may decide that the proceeding not be made entirely or partially public if the parties have filed a request prior to the hearing or if the parties make a statement in the hearing proceeding that the documents or evidence being open to the public could cause material harm to their interests.
9.4 Prior to the start of the hearing, the identification documents of the attendees (observers) shall be checked for eligibility. Attendees (observers) shall actively present their identification documents for inspection. Failure to present identification documents and inability to redress the shortfall in time will result in being rejected attendance by the presiding official. This rejection shall be recorded in the minutes of the hearing.
9.5 A hearing is conducted by a panel comprised of three or more examiners. When a hearing is ongoing, all of the examiners shall be present.
9.6 After the presiding official announces the start of the hearing, the eligibility of the attendees (observers) as well as any grounds for statutory recusal shall first be examined. If no opposition is raised, the presiding official shall then explain the purpose of the hearing and announce the order of statement-making and mutual inquiries, as well as other matters of importance.
9.7 The parties may raise instantaneously their objections to the actions taken during the hearing by the presiding official which they consider to be against the laws or improper. If the objections are well grounded, the presiding official shall then revoke the actions taken. If not, the objections shall be denied.
9.8 The presiding official shall succinctly explain the case, verify the evidence submitted by the parties, and then reaffirm the issues.
9.9 The documents subsequently submitted by the parties pursuant to point 4 shall be limited to supplementary purposes or statements to be made at the hearing. The documents shall be submitted in writing and delivered to the counter party and TIPO ten (10) days prior to the hearing.
9.10 During the mutual inquiries, the parties shall first seek the presiding official's consent before raising any questions.
9.11 During the hearing, if the requester wishes to withdraw the invalidation case, the presiding official may terminate the hearing pursuant to the provisions as prescribed in point 10 of the Program.
9.12 The presiding official considering the parties to have sufficiently carried out the mutual inquiries, shall then announce the end of the hearing immediately after the parties respectively make their closing statements. If the inquiries have not been sufficiently carried out, a decision on the date and venue of a subsequent hearing shall then be made prior to the end of the date of the current hearing.
9.13 During the hearing, the parties may forgo parts of the issues or grounds they alleged. The forgone issues and grounds shall be recorded in the hearing minutes without examination.
9.14 The parties may request presiding official's explanation on issues or matters of the proceeding. The presiding may give a succinct explanation. However, the parties must not ask

the presiding official to disclose his/her convictions on substantive issues.
9.15 The presiding official shall inform the parties that, pursuant to Article 109 of the Administrative Procedure Act, they may bypass the administrative appeal procedure, and proceed directly to filing an administrative lawsuit if they are dissatisfied with the administrative decision rendered based upon the hearing.

10. Termination of the hearing proceeding
10.1 The presiding official may, by request or ex officio, terminate the hearing proceeding given the requester's willingness to withdraw the invalidation case or that the requester's presentation of new facts have impact on the decisions of the invalidation case.
10.2 When a decision on terminating the hearing is rendered by the presiding official, the grounds for termination shall be recorded in the minutes.
10.3 Article 109 of Administrative Procedure Law shall not apply to a decision on invalidation where the corresponding hearing proceeding is terminated.

11. Maintaining order during a hearing
(1) The attendees (observers) and those allowed to sit in should follow the presiding official's instructions;
(2) Smoking or eating and drinking shall be prohibited. All of the portable electronic devices shall be turned off or put on silent mode;
(3) Clapping or creating noisy disturbance in response to statements made by the parties shall be prohibited;
(4) Interrupting or raising doubts while a statement is being made shall be prohibited;
(5) Statements shall be delivered only to address case-relevant matters. They shall not be used to verbally abuse any person;
(6) Unless otherwise approved by the presiding official, the attendees (observers) and those allowed to sit in shall not sound record, video record, or photograph during the hearing; and
(7) Any moves that may disrupt order or are inappropriate shall be prohibited during the hearing.

12. Minutes of a hearing
12.1 The minutes of a hearing or a preliminary hearing shall be made by the recordation staff and incorporated as an attachment to the records of the hearing. The minutes shall contain the following matters:
(1) Circumstances of the case;
(2) Names of the parties, interested parties, witnesses, and expert witnesses attending the hearing;
(3) Date and venue of the hearing;
(4) Gist of the statements or questions from the parties, interested parties, witnesses, or expert witnesses, as well as the documents and evidence provided;
(5) The grounds for raising an objection by the parties during the hearing and the action taken by the presiding official to deal with such objection; and
(6) Gist of the inquiries and the responses thereto.

12.2 Audio and/or video recordings may be used to assist the taking of hearing minutes.
12.3 The minutes shall be completed instantly at the hearing and signed or stamped by the examiners, the parties, interested parties, witnesses, and experts witnesses. Any objections to the minutes must be immediately raised. Corrections or supplements should be made if the presiding official considers the objection to be valid. If not, the objections shall then be recorded.
12.4 The minutes of a hearing shall be made as to the facts and grounds for refusing to sign or stamp on the part of the attending parties, interested parties, witnesses and expert witnesses.

13. Public attendance at hearings
13.1 The general public wishing to sit in on the hearing shall file their requests with TIPO within ten (10) day prior to the date of the hearing.
13.2 Requests for public attendance are handled on a "first come, first served" basis, and are subject to the seats designated for the audience.
14. Language use at the hearing
Mandarin shall be the language used at the hearing. The parties using languages other than Mandarin may file a request with TIPO for an interpreter.