

最高人民法院关于审理侵犯专利权纠纷案件应用法律若干问题的解释（二）

Interpretations (II) of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases Involving Patent Infringement Disputes

（2016 年 1 月 25 日最高人民法院审判委员会第 1676 次会议通过，自 2016 年 4 月 1 日起施行）

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为正确审理侵犯专利权纠纷案件，根据《中华人民共和国专利法》《中华人民共和国侵权责任法》《中华人民共和国民事诉讼法》等有关法律规定，结合审判实践，制定本解释。

With a view to ensuring the correct trial of cases involving patent infringement disputes, these Interpretations are formulated pursuant to the provisions of the Patent Law of the People's Republic of China, the Tort Liability Law of the People's Republic of China, the Civil Procedure Law of the People's Republic of China and other relevant laws and in light of judicial practices

第一条 权利要求书有两项以上权利要求的，权利人应当在起诉状中载明据以起诉被诉侵权人侵犯其专利权的权利要求。起诉状对此未记载或者记载不明的，人民法院应当要求权利人明确。经释明，权利人仍不予明确的，人民法院可以裁定驳回起诉。

Article 1 Where a written claims contains two or more rights, the right holder concerned shall specify in the complaint the rights based on which the alleged infringer is being sued for patent infringement. Where such rights are not specified or not clearly stated in the complaint, the people's court shall require the right holder to specify the rights concerned; and, where the right holder still fails to do so after relevant situations have been explained thereto, the people's court may rule to dismiss the lawsuit.

第二条 权利人在专利侵权诉讼中主张的权利要求被专利复审委员会宣告无效的，审理侵犯专利权纠纷案件的人民法院可以裁定驳回权利人基于该无效权利要求的起诉。

Article 2 Where the right claimed by a right holder in a patent infringement lawsuit is declared invalid by the Patent Re-examination Board, the people's court trying the case involving the patent infringement disputes may render a ruling to dismiss the lawsuit filed by the right holder on the basis of the invalid claim of right.

有证据证明宣告上述权利要求无效的决定被生效的行政判决撤销的，权利人可以另行起诉。

The right holder may file a lawsuit separately if there is evidence proving that the decision to declare the above claim of right invalid is revoked by a binding administrative judgment.

专利权人另行起诉的，诉讼时效期间从本条第二款所称行政判决书送达之日起计算。

If the patentee files a lawsuit separately, the period for limitation of action shall be calculated from the date of service of the administrative judgment stated in Paragraph 2 of this Article.

第三条 因明显违反专利法第二十六条第三款、第四款导致说明书无法用于解释权利要求，且不属于本解释第四条规定的情形，专利权因此被请求宣告无效的，审理侵犯专利权纠纷案件的人民法院一般应当裁定中止诉讼；在合理期限内专利权未被请求宣告无效的，人民法院可以根据权利要求的记载确定专利权的保护范围。

Article 3 Where, as a result of obvious violation of Paragraph 3 or Paragraph 4 of Article 26 the Patent Law, written descriptions cannot be used to explain the claims of rights, which does not fall within the circumstances specified in Article 4 hereof and based on which request is made for declaring the patent invalid, the people's court trying the case involving the patent right dispute shall in general rule to suspend the lawsuit; if no request is filed for declaring the patent invalid within a reasonable period of time, the people's court may determine the scope of patent protection according to the written claims.

第四条 权利要求书、说明书及附图中的语法、文字、标点、图形、符号等存有歧义，但本领域普通技术人员通过阅读权利要求书、说明书及附图可以得出唯一理解的，人民法院应当根据该唯一理解予以认定。

Article 4 Where ordinary technical personnel in the relevant field can clearly arrive at only one unique understanding by reading written claims of rights, written descriptions and attached drawings despite ambiguity in terms of grammar, wording, punctuations, graphics, symbols, etc. in the written claims of rights, written descriptions and the attached drawings, the people's court shall make determination according to such unique understanding.

第五条 在人民法院确定专利权的保护范围时，独立权利要求的前序部分、特征部分以及从属权利要求的引用部分、限定部分记载的技术特征均有限定作用。

Article 5 When a people's court determines the scope of patent protection, the technical features as described in the preamble and the characterizing portion of the independent claims, and in the reference section and the limitations of the dependent claims shall all be defining.

第六条 人民法院可以运用与涉案专利存在分案申请关系的其他专利及其专利审查档案、生效的专利授权确权裁判文书解释涉案专利的权利要求。

Article 6 The people's court may employ another patent which is related to the patent involved in the case in respect of divisional application, and its patent examination files and binding judgments/rulings on patent licensing affirmation to interpret the rights claimed for the patent involved in the case.

专利审查档案，包括专利审查、复审、无效程序中专利申请人或者专利权人提交的书面材料，国务院专利行政部门及其专利复审委员会制作的审查意见通知书、会晤记录、口头审理记录、生效的专利复审请求审查决定书和专利权无效宣告请求审查决定书等。

Patent examination files shall include the written materials submitted by patent applicants or patentees during the process of patent examination, re-examination and declaration of invalidity, as well as the notices on examination opinions, meeting minutes, oral hearing records, binding written examination decisions on patent re-examination requests, written examination decisions on the requests for declaring patents invalid, etc. issued by the patent administrative department of the State Council and its Patent Re-examination Board.

第七条 被诉侵权技术方案在包含封闭式组合物权利要求全部技术特征的基础上增加其他技术特征的，人民法院应当认定被诉侵权技术方案未落入专利权的保护范围，但该增加的技术特征属于不可避免的常规数量杂质的除外。

Article 7 As regards an exhausted claims for a combination, if an alleged infringing technical solution contains additional technical features on the basis of all the technical features in the claims, the people's court shall determine that the alleged infringing technical solution does not fall under the scope of patent protection, unless the additional technical features are unavoidable impurities in normal quantities.

前款所称封闭式组合物权利要求，一般不包括中药组合物权利要求。

An exhausted claims for a combination referred to the preceding paragraph shall generally not include the claims for traditional Chinese medicine composition.

第八条 功能性特征，是指对于结构、组分、步骤、条件或其之间的关系等，通过其在发明创造中所起的功能或者效果进行限定的技术特征，但本领域普通技术人员仅通过阅读权利要求即可直接、明确地确定实现上述功能或者效果的具体实施方式的除外。

Article 8 Functional features are technical features that serve to define structures, compositions, steps, conditions or the relations thereof in terms of their functions or effects in the relevant invention, unless ordinary technical personnel in this field are able to directly and clearly determine the specific exploitation methods for achieving such functions or effects by reading the claims alone.

与说明书及附图记载的实现前款所称功能或者效果不可缺少的技术特征相比，被诉侵权技术方案的相应技术特征是以基本相同的手段，实现相同的功能，达到相同的效果，且本领域普通技术人员在被诉侵权行为发生时无需经过创造性劳动就能够联想到的，人民法院应当认定该相应技术特征与功能性特征相同或者等同。

Where, as compared to the technical features that are recorded in the written descriptions and the attached drawings and are indispensable for achieving the aforesaid functions or effects, the corresponding technical features of an alleged infringing technical solution adopt substantially the same means to achieve substantially the same functions and effects, and can be contemplated without creative work by ordinary technical personnel in the relevant field at the time of the occurrence of the alleged infringement, the people's court shall determine that such corresponding technical features are identical or equivalent to the functional features.

第九条 被诉侵权技术方案不能适用于权利要求中使用环境特征所限定的使用环境的，人民法院应当认定被诉侵权技术方案未落入专利权的保护范围。

Article 9 Where an alleged infringing technical solution cannot be applied to the use environment defined by the use environment features contained in the claims, the people's court shall determine that the alleged infringing technical solution does not fall under the scope of patent protection.

第十条 对于权利要求中以制备方法界定产品的技术特征，被诉侵权产品的制备方法与其不相同也不等同的，人民法院应当认定被诉侵权技术方案未落入专利权的保护范围。

Article 10 Where the preparation methods for an alleged infringing product are neither identical nor equivalent to the technical features in the claims that use preparation methods to define the relevant product, the people's court shall determine that the relevant alleged infringing technical solution does not fall under the scope of patent protection.

第十一条 方法权利要求未明确记载技术步骤的先后顺序，但本领域普通技术人员阅读权利要求书、说明书及附图后直接、明确地认为该技术步骤应当按照特定顺序实施的，人民法院应当认定该步骤顺序对于专利权的保护范围具有限定作用。

Article 11 Where the sequence of technical steps is not specified in the claims for a patented method but ordinary technical personnel in the relevant field are directly and clearly of the opinion that such technical steps shall be exploited according to specific sequence after reading the written claims of rights, the written descriptions and the attached drawings, the people's court shall decide that such sequence of steps has the role of defining the protection scope of the patent right.

第十二条 权利要求采用“至少”“不超过”等用语对数值特征进行界定，且本领域普通技术人员阅读权利要求书、说明书及附图后认为专利技术方案特别强调该用语对技术特征的限定作用，权利人主张与其不相同的数值特征属于等同特征的，人民法院不予支持。

Article 12 Where phrases such as "at least" or "not more than" are adopted in a claims to define numerical features, and ordinary technical personnel in the relevant field are of the opinion that the patented technical solution concerned places special emphasis on the role of such phrase to define technical features after reading the claim of rights, written descriptions and attached drawings, the people's court shall not uphold the claim by the right holder that technical features different from such numerical features are equivalent features.

第十三条 权利人证明专利申请人、专利权人在专利授权确权程序中对权利要求书、说明书及附图的限缩性修改或者陈述被明确否定的，人民法院应当认定该修改或者陈述未导致技术方案的放弃。

Article 13 Where the right holder proves that the narrowed revision or statement made by the patent applicant or the patentee in respect of the claims of rights, written descriptions and attached drawings in the patent licensing affirmation procedure is negated, the people's court shall determine that such revision or statement has not led to the waiver of the technical solution.

第十四条 人民法院在认定一般消费者对于外观设计所具有的知识水平和认知能力时，一般应当考虑被诉侵权行为发生时授权外观设计所属相同或者相近种类产品的设计空间。设计空间较大的，人民法院可以认定一般消费者通常不容易注意到不同设计之间的较小区别；设计空间较小的，人民法院可以认定一般消费者通常更容易注意到不同设计之间的较小区别。

Article 14 When determining ordinary consumers' level of knowledge and cognitive ability as regards a design, a people's court shall consider the design space of the type of the products to which the relevant patented design is identical or similar at the time of the occurrence of the alleged infringement. Where the design space is relatively large, the people's court may determine

that ordinary consumers are usually unlikely to notice the minor differences between different designs; where the design space is relatively small, the people's court may determine that ordinary consumers are usually more likely to notice the minor differences between different designs.

第十五条 对于成套产品的外观设计专利，被诉侵权设计与其一项外观设计相同或者近似的，人民法院应当认定被诉侵权设计落入专利权的保护范围。

Article 15 Where an alleged infringing design is identical or similar to one of the patented designs of a complete set of products, the people's court shall determine that the alleged infringing design falls under the scope of patent protection.

第十六条 对于组装关系唯一的组件产品的外观设计专利，被诉侵权设计与其组合状态下的外观设计相同或者近似的，人民法院应当认定被诉侵权设计落入专利权的保护范围。

Article 16 As regards the design patent of a component product with a unique assembly pattern, if an alleged infringing design is identical or similar to the overall design of the component product after assembly, the people's court shall determine that the alleged infringing design falls under the scope of patent protection.

对于各构件之间无组装关系或者组装关系不唯一的组件产品的外观设计专利，被诉侵权设计与其全部单个构件的外观设计均相同或者近似的，人民法院应当认定被诉侵权设计落入专利权的保护范围；被诉侵权设计缺少其单个构件的外观设计或者与之不相同也不近似的，人民法院应当认定被诉侵权设计未落入专利权的保护范围。

As regards the design patent of a component product whose various components have no assembly pattern at all or do not have a unique assembly pattern, if an alleged infringing design is identical or similar to the designs of all the individual components of the component product, the people's court shall determine that the alleged infringing design falls under the scope of patent protection; and, if the alleged infringing design lacks the design of a certain individual component or is neither identical nor similar to the design of a certain individual component, the people's court shall determine that the alleged infringing design does not fall under the scope of patent protection.

第十七条 对于变化状态产品的外观设计专利，被诉侵权设计与变化状态图所示各种使用状态下的外观设计均相同或者近似的，人民法院应当认定被诉侵权设计落入专利权的保护范围；被诉侵权设计缺少其一种使用状态下的外观设计或者与之不相同也不近似的，人民法院应当认定被诉侵权设计未落入专利权的保护范围。

Article 17 As regards the design patent of a product in active variations, if an alleged infringing design is identical or similar to the designs of all the various use states illustrated in the diagram of variations, the competent people's court shall determine that the alleged infringing design falls under the scope of patent protection; if the alleged infringing design lacks the design of a certain use state or is neither identical nor similar to the design of a certain use state, the people's court shall determine that the alleged infringing design does not fall under the scope of patent protection.

第十八条 权利人依据专利法第十三条诉请在发明专利申请公布日至授权公告日期间实施该发明的单位或者个人支付适当费用的，人民法院可以参照有关专利许可使用费合理确定。

Article 18 Where a right holder files a lawsuit to request an entity or individual to pay appropriate fees for exploiting the relevant invention during the period from the date of announcement of the invention patent application to the date of announcement of the grant of the invention patent in accordance with Article 13 of the Patent Law, the people's court may make determination on reasonable basis by referring to relevant patent royalties.

发明专利申请公布时申请人请求保护的范围与发明专利公告授权时的专利权保护范围不一致，被诉技术方案均落入上述两种范围的，人民法院应当认定被告在前款所称期间内实施了该发明；被诉技术方案仅落入其中一种范围的，人民法院应当认定被告在前款所称期间内未实施该发明。

Where the scope of protection requested by the applicant upon the announcement of the invention patent application is inconsistent with the scope of patent protection upon the announcement of the grant of the invention patent, and an alleged infringing technical solution falls under both of the foregoing two protection scopes, the people's court shall determine that the defendant has exploited the relevant invention during the period stated in the preceding paragraph; and, where the alleged infringing technical solution falls under only one of the two protection scopes, the people's court shall determine that the defendant has not exploited the invention during the period stated in the preceding paragraph.

发明专利公告授权后，未经专利权人许可，为生产经营目的使用、许诺销售、销售在本条第一款所称期间内已由他人制造、销售、进口的产品，且该他人已支付或者书面承诺支付专利法第十三条规定的适当费用的，对于权利人关于上述使用、许诺销售、销售行为侵犯专利权的主张，人民法院不予支持。

Where a party, without the licensing from the patentee and for the purposes of production and business operation, uses, offers for sale of, or sells the products that have been manufactured, sold or imported by another party during the period stated in Paragraph 1 of this Article after the date of announcement of the grant of the invention patent and such another party has paid or promised in writing to pay appropriate fees prescribed in Article 13 of the Patent Law, the people's court shall not uphold the claim by the right holder that the aforesaid use, offer for sale and sale has infringed the patent right.

第十九条 产品买卖合同依法成立的，人民法院应当认定属于专利法第十一条规定的销售。

Article 19 Where a product sales contract is established in accordance with the law, the people's court shall determine that the sales as prescribed by Article 11 of the Patent Law have been constituted.

第二十条 对于将依照专利方法直接获得的产品进一步加工、处理而获得的后续产品，进行再加工、处理的，人民法院应当认定不属于专利法第十一条规定的“使用依照该专利方法直接获得的产品”。

Article 20 As regards the re-processing or re-treatment of a follow-up product obtained from the further processing or treatment of a product directly obtained according to patented methods, a people's court shall determine that such re-processing or re-treatment does not belong to the circumstances of the "use of a product directly obtained according to patented methods" as prescribed under Article 11 of the Patent Law.

第二十一条 明知有关产品系专门用于实施专利的材料、设备、零部件、中间物等，未经专利权人许可，为生产经营目的将该产品提供给他人实施了侵犯专利权的行为，权利人主张该提供者的行为属于侵权责任法第九条规定的帮助他人实施侵权行为的，人民法院应予支持。

Article 21 Where a party has clear knowledge that certain products are the materials, equipment, parts and components, intermediate items, etc. specifically for the exploitation of a patent, and yet still provides, without the licensing from the relevant patentee and for the purpose of production and business operation, such products to another party committing the patent infringement, the people's court shall uphold the claim by the right holder that the party's provision of such products is an act of assistance for infringement as prescribed by Article 9 of the Tort Liability Law.

明知有关产品、方法被授予专利权，未经专利权人许可，为生产经营目的积极诱导他人实施了侵犯专利权的行为，权利人主张该诱导者的行为属于侵权责任法第九条规定的教唆他人实施侵权行为的，人民法院应予支持。

Where a party has clear knowledge that certain products or methods have been granted patent, and yet still actively induces, without the licensing from the relevant patentee and for the purpose of production and business operation, another party committing the patent infringement, the people's court shall uphold the claim by the right holder that the inducing act of the party is an act of abetting another party to commit infringement as prescribed by Article 9 of the Tort Liability Law.

第二十二条 对于被诉侵权人主张的现有技术抗辩或者现有设计抗辩，人民法院应当依照专利申请日时施行的专利法界定现有技术或者现有设计。

Article 22 Where an alleged infringer raises the defense based on one existing technology or existing design, the people's court shall define the existing technology or existing design pursuant to the Patent Law prevailing on the date of patent application.

第二十三条 被诉侵权技术方案或者外观设计落入在先的涉案专利权的保护范围，被诉侵权人以其技术方案或者外观设计被授予专利权为由抗辩不侵犯涉案专利权的，人民法院不予支持。

Article 23 Where the alleged infringing technical solution or design falls within the protection scope of the prior patent right involved in the case, the people's court shall not uphold the defense made by the alleged infringer that its technical solution or design has been granted patent and thus does not infringe the patent right involved in the case

第二十四条 推荐性国家、行业或者地方标准明示所涉必要专利的信息，被诉侵权人以实施该标准无需专利权人许可为由抗辩不侵犯该专利权的，人民法院一般不予支持。

Article 24 Where the recommended national, industrial or local standards clearly indicate the necessary patent-related information, the people's court shall in general not uphold the defense

made by the alleged infringer that the exploitation of such standards do not need the licensing from the patentee and thus does not infringe such patent right.

推荐性国家、行业或者地方标准明示所涉必要专利的信息，专利权人、被诉侵权人协商该专利的实施许可条件时，专利权人故意违反其在标准制定中承诺的公平、合理、无歧视的许可义务，导致无法达成专利实施许可合同，且被诉侵权人在协商中无明显过错的，对于权利人请求停止标准实施行为的主张，人民法院一般不予支持。

Where there commended national, industrial or local standards clearly indicate the necessary patent-related information and the patentee intentionally acts against the obligation for licensing on fair, reasonable and non-discriminatory terms as committed in formulating the standards in consultation with the alleged infringer on the conditions for the exploitation and licensing of such patent, resulting in the failure to conclude the patent licensing contract, the people's court shall, in general, not uphold the claim by the right holder for cessation of the exploitation of the standards, provided that the alleged infringer has no obvious fault in the consultation.

本条第二款所称实施许可条件，应当由专利权人、被诉侵权人协商确定。经充分协商，仍无法达成一致的，可以请求人民法院确定。人民法院在确定上述实施许可条件时，应当根据公平、合理、无歧视的原则，综合考虑专利的创新程度及其在标准中的作用、标准所属的技术领域、标准的性质、标准实施的范围和相关的许可条件等因素。

The conditions for the exploitation and licensing of a patent as mentioned in Paragraph 2 of this Article shall be determined upon consultation by the relevant patentee and the alleged infringer. Where no consensus is reached upon sufficient consultation, the parties concerned may request the people's court to determine such conditions, in which case the people's court shall, on fair, reasonable and non-discriminatory terms, take into comprehensive consideration the degree of innovation of the patent, the role of the patent in relevant standards, the technical field to which the standards belong, the nature and scope of application of the standards, relevant licensing conditions and other factors to determine such exploitation and licensing conditions.

法律、行政法规对实施标准中的专利另有规定的，从其规定。

The provisions on the exploitation of patents involved in standards as otherwise prescribed by laws and administrative regulations shall prevail.

第二十五条 为生产经营目的使用、许诺销售或者销售不知道是未经专利权人许可而制造并售出的专利侵权产品，且举证证明该产品合法来源的，对于权利人请求停止上述使用、许诺销售、销售行为的主张，人民法院应予支持，但被诉侵权产品的使用者举证证明其已支付该产品的合理对价的除外。

Article 25 Where a party uses, offers for sale of, or sells, patent-infringing products for the purpose of production and business operation without the knowledge that such products are manufactured and sold without the licensing from the relevant patentee, and is able to prove the legitimate sources of such products, the people's court shall uphold the request of the right holder that the aforesaid use, offer for sale, or sale be stopped, unless the user of the alleged infringing products furnishes evidence to prove that it has paid reasonable consideration for such products.

本条第一款所称不知道，是指实际不知道且不应当知道。

For the purpose of Paragraph 1 of this Article, "without the knowledge" shall mean the circumstance where a party has no actual knowledge and ought not to have knowledge.

本条第一款所称合法来源，是指通过合法的销售渠道、通常的买卖合同等正常商业方式取得产品。对于合法来源，使用者、许诺销售者或者销售者应当提供符合交易习惯的相关证据。

For the purpose of Paragraph 1 of this Article, "legitimate sources" shall mean the use of legitimate business methods such as lawful sales channels and usual sale and purchase contracts to obtain products. The party who engages in use, offer for sale or sale shall provide relevant evidence consistent with business norms to prove legitimate sources.

第二十六条 被告构成对专利权的侵犯，权利人请求判令其停止侵权行为的，人民法院应予支持，但基于国家利益、公共利益的考量，人民法院可以不判令被告停止被诉行为，而判令其支付相应的合理费用。

Article 26 Where the defendant is found to commit the patent infringement, the people's court shall uphold the request of the right holder that the defendant be ordered to stop the infringement; however, the people's court may, instead of ordering the defendant to stop the act against which the lawsuit is filed, order the defendant to pay reasonable fees as appropriate based on the consideration of the interests of the State and the public interest.

第二十七条 权利人因被侵权所受到的实际损失难以确定的，人民法院应当依照专利法第六十五条第一款的规定，要求权利人对侵权人因侵权所获得的利益进行举证；在权利人已经提供侵权人所获利益的初步证据，而与专利侵权行为相关的账簿、资料主要由侵权人掌握的情况下，人民法院可以责令侵权人提供该账簿、资料；侵权人无正当理由拒不提供或者提供虚假的账簿、资料的，人民法院可以根据权利人的主张和提供的证据认定侵权人因侵权所获得的利益。

Article 27 Where it is difficult to determine the actual loss suffered by a right holder, the people's court shall require the right holder to furnish evidence to prove the gains obtained by the infringer from the infringement in accordance with Paragraph 1 of Article 65 of the Patent Law. Where a right holder has provided the prima facie evidence proving the gains obtained by the infringer but the account books and materials related to the acts of patent infringement are mainly controlled by the infringer, the people's court may order the infringer to submit such account books and materials; where the infringer refuses to provide such account books and materials without justification or provides false account books and materials, the people's court may determine the gains obtained by the infringer from the infringement based on the claims of the right holder and the evidence furnished thereby.

第二十八条 权利人、侵权人依法约定专利侵权的赔偿数额或者赔偿计算方法，并在专利侵权诉讼中主张依据该约定确定赔偿数额的，人民法院应予支持。

Article 28 Where a right holder and the relevant infringer have legally agreed on the amount of compensation for patent infringement or the methods for calculating the amount of compensation and claim during the patent infringement lawsuit that the amount of compensation shall be determined in accordance with such agreement, the people's court shall uphold such claim.

第二十九条 宣告专利权无效的决定作出后，当事人根据该决定依法申请再审，请求撤销专利权无效宣告前人民法院作出但未执行的专利侵权的判决、调解书的，人民法院可以裁定中止再审审查，并中止原判决、调解书的执行。

Article 29 Where the party concerned legally applies for retrial based on the decision on declaring the patent invalid to request for the revocation of the judgment or mediation statement on patent infringement that is rendered by the people's court before the patent is declared invalid but is not enforced, the people's court may render a ruling to suspend the examination in retrial and suspend the enforcement of the original judgment or mediation statement.

专利权人向人民法院提供充分、有效的担保，请求继续执行前款所称判决、调解书的，人民法院应当继续执行；侵权人向人民法院提供充分、有效的反担保，请求中止执行的，人民法院应当准许。人民法院生效裁判未撤销宣告专利权无效的决定的，专利权人应当赔偿因继续执行给对方造成的损失；宣告专利权无效的决定被人民法院生效裁判撤销，专利权仍有效的，人民法院可以依据前款所称判决、调解书直接执行上述反担保财产。

If the patentee provides the sufficient and effective guarantee to the people's court to request that the enforcement of the judgment or mediation statement mentioned in the preceding paragraph be continued, the people's court shall approve such request; if the infringer provides sufficient and effective counter-guarantee to the people's court to request that the enforcement be suspended, the people's court shall approve such request. Where the decision declaring the patent invalid is not revoked by the binding ruling/judgment of the people's court, the patentee shall make compensation for the loss suffered by the other party concerned due to the continuation of the enforcement of such decision; where the decision declaring the patent invalid is revoked by the binding ruling/judgment of the people's court, the people's court may directly enforce the property under the above counter-guarantee based on the judgment or mediation statement mentioned in the preceding paragraph provided that the patent is still valid.

第三十条 在法定期限内对宣告专利权无效的决定不向人民法院起诉或者起诉后生效裁判未撤销该决定，当事人根据该决定依法申请再审，请求撤销宣告专利权无效前人民法院作出但未执行的专利侵权的判决、调解书的，人民法院应当再审。当事人根据该决定，依法申请终结执行宣告专利权无效前人民法院作出但未执行的专利侵权的判决、调解书的，人民法院应当裁定终结执行。

Article 30 If a lawsuit is not filed against a decision declaring the patent invalid with the people's court within the statutory time limit or the decision is not revoked by the binding ruling/judgment made after the filing of the lawsuit, the people's court shall conduct retrial if the party concerned legally applies for retrial based on such decision requesting that the judgment or mediation statement on patent infringement that has been rendered before the declaration of the invalidity of patent and is not yet enforced be revoked. If the party concerned, based on such decision, legally applies for termination of the enforcement of the judgment or mediation statement on patent infringement that has been rendered before the declaration of the invalidity of patent and is not yet enforced, the people's court shall rule to terminate the enforcement.

第三十一条 本解释自 2016 年 4 月 1 日起施行。最高人民法院以前发布的相关司法解释与本解释不一致的，以本解释为准。

Article 31 These Interpretations shall come into effect on April1, 2016. Where there is any discrepancy between relevant judicial interpretations promulgated previously by the Supreme People's Court and these Interpretations, these Interpretations shall prevail.