

## PROJET DE

# GUIDE FOR THE ADMINISTRATIVE ENFORCEMENT OF PATENTS

### Two general comments :

#### **1. Limited powers of IPO in patent enforcement**

There is a disproportion between the very ambitious and detailed procedure described in the Guidelines and the very limited powers of IPO in patent enforcement. At the end of all this, the IPO does not even have the right to seize and confiscate infringing products. It can only "stop the production, destroy the equipment and molding devices... and order not to sell or use any unsold infringing product..." [Article.2.5.4.1.2 (1)].

Therefore, in order for the IPO enforcement to become really efficient, it should be strongly linked to the next stage : civil litigation. Only the Court can issue a fine, award damages etc. So, instead of being an appeal to the the court in case the decision of IPO is not satisfactory, the transfer of the case to the Court should rather be viewed as a natural stage following the IPO procedure.

This should be decided in a regulation issued jointly by SIPO and the SPC.

#### **2. Comments about the IPO procedure itself**

It is obviously inspired by the Code of Civil Procedure (to the point that, on occasions, the text or at least the translation - refers to the "court hearing");

We regret to find the same excessively burdensome and unjustified requirement of notarization and legalization for identification documents, POA and foreign evidence;

Patent litigation being very technical, we cannot insist too much on the necessity to have everything in written form : not only the complaint but also the defense, and the reply of the plaintiff to the written defense, and also the reply of the defendant to the Plaintiff's reply. The procedure should provide for the submission of these arguments within specific time limits (with some possible flexibility), as well as the submission of evidence used by each party to the case. The objective is to avoid last minute surprises at the oral hearing. As to the time of the oral hearing, it should be set within a certain time following the last exchange of written arguments (the Guidelines provide for a fixed 3 days notice, which is too short).

The second advantage of adopting such formal and written procedure at the IPO stage is that, when (as suggested above) the case is referred to the Court, the judge can study a complete file, already prepared by the IPO, and does not have to re-start the case from scratch. More efficient.