

Letter of the Supreme People's Court on the Issue of Whether the Exploitation of a Patent in the Specification for the Design of Ram-compaction Piles with a Composite Bearing Base, an Industry Standard Issued by the Ministry of Construction, by Chaoyang Xingnuo Company Which Has Conducted Design and Construction according to the Standard Constitutes a Patent Infringement

(No. 4 [2008] of the Supreme People's Court)

The Higher People's Court of Liaoning Province:

Your Request for Instructions on the Case of Ji Qiang and Liu Hui v. Chaoyang Xingnuo Building Construction Co., Ltd. for Disputes over Patent Infringement (No.126 [2007] of the Higher People's Court of Liaoning Province) has been received, and after discussions, our reply is as follows:

In view of the actual situation that the standard-setting bodies in China have not established the relevant rules on the public disclosure and use of patent information in a relevant standard, if a patentee has participated in setting a standard or has agreed to bring his patent into a state, industry or local standard, it shall be deemed that the patentee has permitted others to exploit such a patent while implementing the standard, and therefore that the relevant exploitation by others shall not constitute the patent infringement prescribed in Article 11 of the Patent Law. The patentee may require the person exploiting the patent to pay a certain royalty, which, however, shall be evidently less than the normal royalty; if the patentee agrees to give up royalties, his agreement shall be followed.

For the case on which you've requested instructions, please handle it according to the aforesaid principles on the basis of finding the relevant facts, especially whether the patent involved in the case has been brought into the disputed standard.

July 8, 2008