









Legal Provisions for Reference -International Comparison of Indirect Infringement of Patent Right-

**Just for reference*

Japan 	China 	Korea 	India 
<u>Infringement</u>	<u>Infringement</u>	<u>Infringement</u>	<u>Infringement</u>
<p>Patent Act (Acts Deemed to constitute infringement) Article 101 The following acts shall be deemed to constitute infringement of a patent right or an exclusive license:</p> <p>(i) where a patent has been granted for an invention of a product, acts of producing, assigning, etc., importing or offering for assignment, etc. any product to be used exclusively for the producing of the said product as a business;</p> <p>(ii) where a patent has been granted for an invention of a product, acts of producing, assigning, etc., importing or offering for assignment, etc. any product (excluding those widely distributed within Japan) to be used for the producing of the said product and indispensable for the resolution of the problem by the said invention as a business, knowing that the said invention is a patented invention and the said product is used for the working of the invention; <i>(The rest is omitted.)</i></p>	<p>Civil Code Article 1169 A person who aids or abets an actor in the commission of a tortious act shall assume joint and several liability with the actor. <i>(The rest is omitted.)</i></p> <p>Interpretation (II) by the Supreme People’s Court on Several Issues concerning the Application of Law in Trials of Disputes over Infringement of Patent Rights Article 21 When a party, knowing clearly that an involved product is a material, an equipment, a component or an intermediate and so on exclusively used for exploitation of a patent, nevertheless provides such product, for the purpose of production or business management, to a third party implementing an act of infringement of a patent, a competent people's court shall uphold the claim by the right holder that the action of such provider falls under an action to assist another person in committing a tort provided in Article 1169 of the Civil Code.</p> <p>When a party, knowing clearly that a patent right is granted for an involved product or method, without any licensing from the patentee, nevertheless induces actively a third party to implement an act of infringement of the patent, for the purpose of production or business management, a competent people's court shall uphold the claim by the right holder that the action of such inducer falls under an action to abet another person in committing a tort provided in Article 1169 of the Civil Code.</p>	<p>Patent Act Article 127 (Acts Deemed to be Infringement) Conducting any of the following acts for business purposes shall be deemed to be infringement of a patent right or an exclusive license:</p> <p>1. In the case of an invention of a product, an act of making, assigning, leasing, importing, or offering for assignment or lease articles used exclusively for producing such products; and <i>(The rest is omitted)</i></p>	<p>Patent Act, 1970 Section 48. Rights of patentees Subject to the other provisions contained in this Act and the conditions specified in section 47, a patent granted under this Act shall confer upon the patentee—</p> <p>(a) where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India: <i>(The rest is omitted)</i></p>
<u>Injunction</u>	<u>Injunction</u>	<u>Injunction</u>	<u>Injunction</u>
<p>Patent Act (Right to demand an Injunction) Article 100 (1) A patentee or exclusive licensee may file a claim against a person that infringes or is likely to infringe the patent right or exclusive license for the cessation or prevention of the infringement. <i>(The rest is omitted.)</i></p>	<p>Civil Code Article 179 The main forms of civil liability include: (1) cessation of the infringement; <i>(The rest is omitted.)</i></p>	<p>Patent Act Article 126 (Right to Seek Injunction against Infringement, etc.) (1) A patentee or an exclusive licensee may file a complaint to seek injunction against, or prevention of, infringement against a person who infringes, or is likely to infringe, his or her rights. <i>(The rest is omitted)</i></p>	<p>Patent Act, 1970 Section 108. Reliefs in suits for infringement (1) The reliefs which a court may grant in any suit for infringement include an injunction (subject to such terms, if any, as the court thinks fit) and, at the option of the plaintiff either damages or an account of profits. <i>(The rest is omitted)</i></p>

間接侵害に関する法的枠組み

Legal Framework regarding Indirect Infringement

	日本 Japan 	中国 China 	韓国 Korea 	インド India 
法令上の根拠 Legal Authorities	特許法 Patent Act	専利法+民法典 +「司法解釈」 Patent Law & Civil Code & "Judicial Interpretation"	特許法 Patent Act	なし None
侵害の類型 Types of Infringement	1) 専用品型 Exclusive use 2) 非専用品型 Multi-use but indispensable	1) 専用品/幫助 Exclusive use/ Aiding 2) 誘引/教唆 Inducing/ Abetting	専用品 Exclusive use	なし None

模擬事例についての判断

Decisions on the Mock Case

Yes: Infringing
No: No infringing

	日本 Japan 	中国 China 	韓国 Korea 	インド India 
本件スタイラス D's Stylus	非専用品として 間接侵害 Yes; Multi-use but indispensable	専用品として 間接侵害 Yes; Exclusive use	専用品として 間接侵害 Yes; Exclusive use	非侵害(事情 により直接侵 害成立) No (Cond. infringing directly)
本件位置 検出器 D's Position Detector	非侵害 No	非侵害 No	非侵害 No	
差止め Injunction	本件スタイラス D's Stylus	本件スタイラス D's Stylus	本件スタイラス D's Stylus	否定(事情に より全体) Denied (Cond. both)