February 26, 2010

China National Institute of Standardization
Standardization Theory and Strategy Department
4 Zhichun Road
Haidian District, Beijing, 100088
Contact: Zhu Xianghua

Re: ABA Section of Science & Technology Law Invitation to Collaborate on Technical Standards Patent Policy Issues

Ladies and Gentlemen:

We appreciate this opportunity to comment on the “Disposal Rules for the Inclusion of Patents in National Standards” (“Proposed Rules”) issued on January 28, 2010.

The American Bar Association (“ABA”) is the largest voluntary professional association in the world. With more than 400,000 members, the ABA provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public. The views presented herein have not been approved by the House of Delegates or the Board of Governors of the ABA and should not be construed as representing the position of the ABA as a whole.

The ABA’s Section of Science & Technology Law (the “Section”) was formed in 1974 to provide a forum for addressing issues at the intersection of law, science, and technology. The Section has long addressed the issue of standardization as essential to technological development. The Section’s Technical Standardization Committee seeks to improve the development of solutions to policy issues having a mixture of legal and technical factors by seeking to balance or change the law or rules applicable to standards development and use.

Given China’s importance in the global technology marketplace, we sincerely appreciate the willingness of the Chinese agencies to consider favorably the comments provided by international organizations on SAC’s November 2009 draft standardization rules. We concur with organizations such as the American Intellectual Property Law Association (AIPLA) and the Intellectual Property Owners Association (IPO) that the current Proposed Rules are far more consistent with international norms and practices in the technical standardization area than the SAC document and demonstrate China’s desire to participate on equal terms with other nations in the development of standards that are critical to the functioning of the information economy. We understand that AIPLA and IPO have offered CNIS specific comments
on the Proposed Rules, and we support our colleagues’ wish to bring the greatest clarity possible to this important document.

Like CNIS, the ABA views education as one of its primary missions. Our Committee has long been active in the field of standards education. To this end we have conducted numerous seminars and teleconferences to educate attorneys and other professionals about standards legal issues, and we have published the *Standards Development Patent Policy Manual*, which explicates the many different clauses and provisions typically found in the patent policies of standards development organizations.

We would like to offer CNIS and SAC the opportunity to cooperate on standards-related education. Our hope is that such cooperation may both improve international understanding of China’s standards policies and give our members the opportunity to share their substantial experience in the standards area with CNIS and SAC.

In this spirit, we would be open to discussing the translation of our *Standards Development Patent Policy Manual* into Chinese, so that the years of practical experience embodied in its pages may be utilized by standards developers and policy makers throughout China. We feel that our *Manual* is a unique resource in this field, and would like to offer it as a resource in promoting broader understanding of the rationale behind patent policy provisions that are used internationally. Many of the definitions and terms used in the draft CNIS Disposal Rules are discussed in detail in the *Manual*, together with interpretations and examples from usage in the industry. For example, the term “Essential Patent”, defined in Section 3.1 of the Proposed Rules, is discussed at length on pages 10-13 of the *Manual*, including the preferred variation “Essential Claim” and another common variant, “Necessary Claim”. Likewise, the term “Reasonable and Nondiscriminatory (RAND)”, defined in Sections 3.2 and 3.3 of the Proposed Rules, are discussed in detail on pages 22-24 and 56-58. We are hopeful that the *Manual* could thus be a useful interpretive and drafting guide for Chinese policy developers and interpreters.

We would also welcome opportunities for direct discussion and collaboration between our Section and CNIS/SAC. Such collaboration could be initiated during CNIS visits to the United States and during international conferences held in China (for example, the IETF meeting that will be held in Beijing in November).

Finally, we would be happy to serve as a point of contact whenever CNIS or SAC wish to solicit the input of the standards legal community in the U.S. or internationally. Our members represent many of the largest corporations and institutions that participate in standards activities, and we remain in contact via regular meetings as well as electronic mailing lists.
Again, we thank CNIS and SAC for the opportunity to respond to the Proposed Rules and look forward to our mutual cooperation on these important international issues.

Respectfully yours,

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