

[ **IPO OFFICE ORDER NO. 186, December 06, 2010** ]

**ENHANCING THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS BY AMENDING CERTAIN PROVISIONS OF THE REGULATIONS ON ADMINISTRATIVE COMPLAINTS FOR VIOLATION OF LAW INVOLVING INTELLECTUAL PROPERTY RIGHTS (IPV RULES)**

**Whereas,** it is the policy of the Intellectual Property Office to continuously review and streamline its operations, system processes, including administrative procedures, in resolving disputes and controversies involving intellectual property rights;

**Whereas,** under Sec. 10.3 of Rep. Act No. 8293, also known as the Intellectual Property Code of the Philippines ("IP Code") the Director General may by regulations establish the procedure to govern administrative proceedings;

**Whereas,** under Sec. 7 (a) of the IP Code, the Director General shall manage and direct all functions and activities of the Office, including the promulgation of rules and regulations to implement the objectives, policies, plans, programs and projects of the Office;

**Whereas,** the rules and regulations on administrative complaints which took effect on December 17, 1998 was modified, which Modified Rules and Regulations on Administrative Complaints took effect on March 28, 2001;

**Whereas,** there is a need to further amend the Regulations on Administrative Complaints in order to achieve a more efficient and expeditious resolution of administrative complaints, including the availing of provisional remedies for aggrieved IPR owners against IPR violators, in the Bureau of Legal Affairs;

**Now, Wherefore,** *the Regulations on Administrative Complaints for Violation of Law Involving Intellectual Property Rights, as modified, is hereby further amended as follows:*

**Section 1.** The first paragraph of Sec. 6 of Rule 2 is hereby amended to read, as follows:

Section 6. Payment of Filing Fee and Docketing – The complaint shall be filed in duplicate with the Bureau, which shall issue an order for the payment of the required fee."

**Section 2.** Sections 3, 4, 5 and 6 of Rule 5 of the Rules and

Regulations on Administrative Complaints for Violation of Law Involving Intellectual Property Rights are amended, to read as follows:

**Section 3** *Verified Application and Bond for Preliminary Injunction or Temporary Restraining Order* – A preliminary injunction or temporary restraining order may be granted only upon compliance with the following:

- a. The application in the action or proceeding is verified and shows facts entitling the applicant to the relief demanded;
- b. Unless exempted, the applicant files with the Bureau a cash bond executed to the party or person enjoined in an amount to be fixed by the Hearing Officer and approved by the Director, or in his/her absence, the Assistant Director, to the effect that the applicant will pay to such party or person all damages which the latter may sustain by reason of the injunction or temporary restraining order if the Bureau should finally decide that the applicant was not entitled thereto. Upon posting of the required bond, a writ of preliminary injunction or temporary restraining order shall be issued. The posting of surety bond in lieu of cash bond shall be governed by the appropriate guidelines that may be issued by the IPO.
- c. When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case shall be assigned to a Hearing Officer after due notice to the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or accompanied by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit upon the adverse party in the Philippines. However, where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a non-resident thereof, the requirement of prior or contemporaneous service of summons shall not apply.

**Section 4.** *When Temporary Restraining Order (TRO) May be Granted.* – A temporary restraining order may be granted subject to the following procedure:

a. The complaint with an application for the issuance of a temporary restraining order and/or a writ of preliminary injunction filed before the Bureau shall have attached thereto the affidavit/s of the complainant's witness/es and the originals or certified true copies of the supporting documents/s thereof, in support of the application.

b. Within 24 hours from receipt of the application for TRO and the supporting documents, the Bureau shall issue a notice to respondent to file its counter-affidavits, including the affidavits of witness/es and the supporting document/s thereof, within a non-extendible period of ten (10) days from receipt of said notice.

Notwithstanding the absence of all /some of the documents/papers/ evidence required herein from the parties, the Hearing Officer shall make an evaluation or assessment of the application on the basis of the allegations stated in the application and whatever documents/papers/ evidence, if any, that may be attached to the records.

c. Thereafter, the Hearing Officer shall draft the resolution on the application within ten (10) days from receipt by the Bureau of the respondent's counter-affidavits with the originals or certified true copies of the supporting documents thereof.

d. If it shall appear that great and irreparable injury would result to the applicant, the Hearing Officer may then issue a temporary restraining order (TRO) with the approval of the Director, or in his/her absence, the Assistant Director, to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined.

No motion for reconsideration of the grant of an application for the issuance of a TRO shall be allowed.

e. Notwithstanding the foregoing, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the Hearing Officer, and as approved by the Director, or in his/her absence, the Assistant Director, and with the concurrence of the Director General, or in his/her absence, the Deputy Director General-in-Charge of the IPO, may issue ex parte a temporary restraining order effective for only seventy-two