



## Featured Article

# Determining the Legitimacy of Patent Infringement Warning Letters

## - From the Perspective of Commercial Defamation Disputes

In intellectual property protection, patent infringement warning letters are an important means for right holders to safeguard their rights independently. By prompting negotiation between the right holder and the alleged infringer, such letters can significantly reduce enforcement costs, improve dispute resolution efficiency, and minimize the need for judicial proceedings—thereby conserving judicial resources. Their legality and positive role have been clearly recognized by law.

However, the exercise of rights must have boundaries. A patent infringement warning is **not an unrestricted tool**. This article analyzes the legitimacy of sending patent infringement warning letters from the perspective of recent commercial defamation dispute cases, and provides practical recommendations based on case studies and experience.

### I. Theoretical Basis of Patent Infringement Warning Letters

Although Chinese patent law does not

explicitly define "patent infringement warning letters," Article 18 of the *Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Patent*

*Infringement Disputes* (Fa Shi [2009] No. 21) stipulates that one condition for filing a declaratory judgment of non-infringement is that the right holder has issued an infringement warning to another party. Thus, issuing a patent warning letter is a **prerequisite** for filing such a suit, which confirms its legitimate status in the patent enforcement process.

Sending a patent infringement warning letter is a specific form of IP infringement notification. For right holders, it serves as a form of **self-help** to address infringement and a key means to protect legitimate interests. However, right holders must respect legal boundaries—warnings cannot be used to harm others' rights or disrupt market order. If a right holder departs from the legitimate purpose of enforcement and misuses warnings to gain a competitive edge or disrupt competitors' business (for example, sending letters to customers without solid evidence of infringement, or making misleading statements that defame competitors), such conduct exceeds the lawful scope of rights and may constitute **commercial defamation** or other unfair competition.

## II. Standards for Determining the Legitimacy of Patent Infringement Warning Letters

Article 12 of the *Anti-Unfair Competition Law of the People's Republic of China*

(revised June 2025) provides that business operators shall not fabricate or disseminate false or misleading information that damages the commercial reputation or product reputation of others.

Whether sending a patent infringement warning letter constitutes a legitimate act of patent enforcement or an act of unfair competition through commercial defamation depends on multiple factors—such as the right holder's legal status, the content of the warning, the target recipients, and the delivery method. Courts will examine whether the right holder exercised due diligence and whether the alleged infringement had a reasonable basis. If a right holder fails to exercise due care and disseminates false or misleading information that harms a competitor's reputation, such conduct constitutes **commercial defamation**.

### (1) Right Holders Must Exercise Due Diligence Before Sending a Warning Letter

Before sending a patent infringement warning letter, the right holder must fulfill a duty of due care to avoid abuse of rights.

**Case 1: (2022) Yue 06 Min Zhong No. 7974 - Commercial Defamation Dispute (Foshan Intermediate People's Court, Guangdong)**

The court held that while issuing infringement warnings is a legitimate means of protection, it must be balanced with fair competition. In this case, Guanbo

Co. sent letters not to the alleged infringer, Shitong Co., but to Shitong's customers—entities with limited ability to assess infringement and thus more susceptible to influence. Therefore, Guanbo had a **higher duty of care** to verify facts and provide clear legal reasoning before sending the letters.

However, Guanbo failed to fulfill this duty. The company's patent was a **utility model**, which undergoes only formal examination, yet the letter did not specify patent stability or infringement analysis. It also included statements unrelated to patent issues (e.g., using recycled plastic materials) without factual evidence. The court found that Guanbo had failed to exercise reasonable care.

### **Case 2: (2024) E Zhi Min Zhong No. 29 - Commercial Defamation Dispute (Hubei High People's Court)**

In the case of (2024) E Zhi Min Zhong No. 29, the court held that when a right holder issues a patent infringement warning, it must be based on factual grounds, exercise due diligence, and fully disclose the necessary information for determining infringement. This ensures the legitimate exercise of rights while protecting competitors' lawful interests. Jiangsu *Geng* Company failed to fulfill these obligations. The main reasons were as follows:

1. Jiangsu *Geng* Company did not actually own the patent right mentioned in its letter, yet it **falsely claimed to be the patent holder**.
2. **It failed to disclose key independent claims**, instead selectively quoting subordinate claims with restrictive conditions, which easily misled recipients into believing that the patent covered "high-strength rebar itself" rather than "the rational reinforcement ratio of beam components configured with high-strength rebar";
3. Without identifying specific products or calculating cross-sectional area ratios, it directly asserted that the use of certain types of high-strength rebar constituted infringement. The information disclosed about the alleged infringement was insufficient, violating the **principle of good faith**.

Moreover, considering that Anhui *Ji* Company actually held the relevant invention patent, and based on the letter's wording and evidence presented, the court rejected Jiangsu *Geng* Company's defense that it was a licensed user and that its statements were objective. The court determined that the infringement information in the letter was **misleading** and that the company **failed to exercise due diligence**.

### **Case 3: (2021) Su Min Zhong No. 919 - Commercial Defamation Dispute (Jiangsu High People's Court)**

In the case of (2021) Su Min Zhong No. 919, the court determined that Jiangsu Xinghui Company failed to exercise due diligence when sending patent infringement

warning letters. The main reasons were as follows:

1. Jiangsu Xinghui Company was only an **exclusive licensee** of the patent in question, not the patent owner, and had limited understanding of the patent's technology and stability. Yet, within barely one month after obtaining the license, it commissioned an infringement comparison, and less than six months later, it sent warning letters. Later, claims 1 and 3 of the patent it relied upon were **invalidated**, and its infringement lawsuit against Jingmei Company was **withdrawn**. This showed that Xinghui failed to reasonably assess the patent's validity before issuing the letters.
2. Determining patent infringement requires comprehensive consideration of both potential infringement and possible defenses. However, Xinghui relied solely on a **privately commissioned evaluation report**, which only stated that Jingmei's products "might infringe" - a **non-definitive conclusion**. Furthermore, evidence provided in the appeal did not specify any product details, making its infringement determination unreliable.
3. The company did not verify the alleged infringement with Jingmei (the manufacturer) but instead directly sent warning letters to Jingmei's four major customers (product users), who had weaker technical judgment and

stronger risk aversion, further indicating lack of diligence.

Considering these factors, the court held that Xinghui, without sufficient understanding of its patent status and without a high degree of certainty regarding infringement, **recklessly sent infringement warning letters** to the core customers of its competitor, Jingmei Company. Therefore, Xinghui was deemed to have **failed to fulfill its duty of due care**.

#### **Case 4: Automobile Sales Company v. Automobile Technology Company - Commercial Defamation Dispute (Fuzhou Intermediate People's Court, Jiangxi)**

In this case, the court found that the Automobile Technology Company had **exercised due diligence** regarding the content and issuance of its lawyer's letter, and thus its conduct **did not constitute commercial defamation**. The reasoning was as follows:

1. Before sending the letter, the company conducted an analysis jointly with a professional technical team and preliminarily determined that the front and rear bumpers of the business vehicle sold by the Automobile Sales Company were similar to its own **design patent**.
2. The letter **fully disclosed infringement-related information**, clearly identified ownership of its design patent, and asserted that the

alleged infringing designs of those parts **fell within the scope of protection** of its design patent.

#### Case 5:

#### "Photoactivated Chemiluminescence Homogeneous Immunoassay Platform" - Commercial Defamation Dispute (Pudong New Area People's Court, Shanghai)

In this case, the court found that regarding the "1012 Warning Letter," the defendant based its claims on **valid patents at the time of issuance**, and in the letter, it disclosed the **scope of protection sought**, the **alleged infringing information**, details of **filed enforcement litigation**, and included **product comparison charts**. The court held that the defendant had exercised **reasonable care**, and therefore, its actions **did not constitute commercial defamation** nor violate Article 2 of the *Anti-Unfair Competition Law*.

From the above cases, it is evident that before sending a patent infringement warning letter, a right holder must **fulfill its duty of due diligence**. First, verify the **stability of the patent right** through professional searches and ensure that the likelihood of invalidation is low, avoiding warnings based on unstable patents; Second, **accurately determine the facts of infringement** by comparing the alleged infringing product with the patented technical solution, ensuring that the product indeed falls within the patent's scope of protection before taking action.

#### (2) Patent Infringement Warning Letters Must Avoid False or Misleading Information to Prevent Damage to the Reputation of Related Parties

Article 12 of the *Anti-Unfair Competition Law* stipulates that "false information" refers to information that is untrue or inconsistent with the facts - that is, fabricated or invented content. "Misleading information," on the other hand, includes information that may be wholly or partially true but is presented ambiguously, selectively, or in a way that obscures the truth, thereby causing recipients to form a distorted understanding of objective facts. Misleading information focuses not on the objective truth of a statement but on the **effect** of its wording - whether the manner and content of expression are sufficient to cause misunderstanding among relevant audiences.

The "commercial reputation or product reputation" referred to in Article 12, collectively known as **goodwill**, cannot exist independently; it is inherently tied to a business operator. The operator's investments in products, services, brands, business strategies, technologies, and marketing methods are the basis for generating such goodwill. Its formation and maintenance result from the operator's ongoing efforts and represent consumers' and partners' subjective evaluation of the operator and its offerings.

Commercial defamation aims to alter consumer perceptions, thereby

influencing purchasing choices, harming a competitor's reputation, weakening its competitiveness, and reducing business opportunities.

Damage to goodwill includes not only **actual harm** but also the **potential for harm**, encompassing both direct financial loss and indirect loss such as loss of trading opportunities or reduced bargaining power.

### **Case 3: (2021) Su Min Zhong No. 919 - Commercial Defamation Dispute (Jiangsu High People's Court)**

In the (2021) Su Min Zhong No. 919 case, the court held that Jiangsu Xinghui Company's patent infringement warning letters contained misleading information and damaged Jingmei Company's commercial reputation, for the following reasons:

1. In the "Conclusions and Claims" section, the letter stated affirmatively that Jingmei's refrigerator slide rails **fell completely within the scope of patent protection and constituted infringement**, with the "rights protection request" highlighted in bold. Although the letter elsewhere used terms like "possible" and "suspected," the definitive tone in key sections was enough to mislead recipients. Even though Haier did not immediately suspend cooperation with Jingmei, it required Jingmei to conduct an infringement risk review, demonstrating that it had been misled. Xinghui's argument that no

misunderstanding occurred because cooperation was not suspended was therefore rejected.

2. The warning letters were sent to Jingmei's **four major business partners**, who were also Xinghui's clients. These four companies held significant market influence in the refrigerator slide rail sector. The dissemination of these letters had sufficient market impact to constitute **"information dissemination."** Xinghui's argument that its letters were sent only to specific entities and thus did not constitute "dissemination" was not accepted.

### **Case 6: (2023) Hu 0104 Min Chu No. 5559 - Commercial Defamation Dispute (Xuhui District People's Court, Shanghai)**

In the (2023) Hu 0104 Min Chu No. 5559 case, the court held that the lawyer's letter issued by Xuanpu Company contained **misleading information and damaged MediaTek's commercial reputation**, based on the following reasoning:

1. The lawyer's letter **lacked objective basis and failed to disclose facts truthfully**. The infringement comparison report relied upon by Xuanpu did not actually compare the patent with MediaTek's chip technology; instead, it speculated infringement merely from functional similarities. The report was not shared with the recipient, and the letter further **implied**

**infringement** by referencing unrelated events such as "employee turnover," which constituted fabricated facts.

2. The letter contained **errors and improper wording**, including mistakes in patent names and chip models, and used subjective phrases such as "constitutes patent infringement," which exceeded reasonable limits of rights protection and were likely to mislead recipients.
3. Xuanpu's **intentional misconduct** was evident - despite knowing its information lacked foundation, it still sent letters to MediaTek's clients, attempting to induce them to cease cooperation or negotiate compensation, thereby pursuing self-interest while disregarding harm to MediaTek's reputation.

The court further noted that commercial defamation, as prohibited by the *Anti-Unfair Competition Law*, constitutes a form of "**competitive cheating**" that violates the principle of good faith and disrupts market order. Such behavior can harm not only competitors like Xuanpu but also other market participants and consumers. Therefore, **regardless of whether the defamation achieved its intended purpose** or caused **quantifiable loss**, the act itself must be condemned and prohibited.

**Case 7: Company A v. Technology Company B - Commercial Defamation**

### **Dispute (Tianjin No. 3 Intermediate People's Court)**

Both Company A and Technology Company B operated in the **anti-counterfeiting traceability industry**, making them direct competitors. The court found that when it was still uncertain whether Company A's "cloud code" technology infringed or possessed core technology, Technology Company B **did not communicate directly** but instead sent letters to Company A's clients, claiming that Company A's products lacked "core patents for invisible code record information" and were "unlikely to avoid infringement."

Such statements were **misleading** to clients, likely to diminish their evaluation of Company A, and thus harmed its commercial reputation. The court therefore held that Technology Company B's conduct **constituted commercial defamation**.

From the above cases, it is clear that patent infringement warning letters must **avoid containing false or misleading information** to prevent damage to others' reputations. For instance, Xuanpu Company's unfounded accusations of infringement, Jiangsu Xinghui's definitive infringement assertions, and Technology Company B's false claim that its competitor lacked core patents—all misled others and harmed competitors' goodwill, thereby constituting **commercial defamation**.

### III. Recommendations for Sending Patent Infringement Warning Letters

Based on relevant commercial defamation cases and practical experience, the following recommendations are proposed regarding the issuance of patent infringement warning letters:

#### 1. Assess the Legitimacy of the Sender

In patent enforcement contexts, the sender of a warning letter must fall within the **legally authorized scope** - not just any entity may send such letters. The parties entitled to independently exercise rights are limited to four categories:(1) the **original patent holder**, who naturally has the right to enforce the patent;(2) the **exclusive licensee**, who may assert rights independently within the scope of authorization;(3) the **sole (or "exclusive but not absolute") licensee**, only when the patent holder explicitly declines to act; and(4) the **lawful successor** of the patent holder. Letters must therefore be issued only by entities with legitimate rights, to avoid disputes arising from **improper standing**.

#### 2. Select Recipients Carefully

While the law does not restrict to whom or in what order warning letters may be sent, **product users** (often customers of the manufacturer) generally have weaker capability to assess patent infringement

but stronger risk aversion, making them more easily influenced by infringement warnings. When sending letters to the alleged infringer's **clients**, special care must be taken to ensure that the content is not misleading. Additionally, the sender must verify whether the recipients have any potential involvement in infringement. For example, in case (2024) E Zhi Min Zhong No. 29, Jiangsu *Geng* Company sent letters to entities such as a standard-setting body, a design institute, and an architectural society—none of whom were likely to be infringers. This failure to verify recipients' relevance demonstrated a **lack of due care**.

#### 3. Conduct Factual Investigation and Legal Analysis Before Sending

The content of the letter must be supported by factual and legal grounds, fully disclosing key information such as the **scope of rights claimed and specific details of the alleged infringement**. The expression used should be limited to what is necessary to **clarify facts and stop infringement promptly**.

Typically, a warning letter should include a **claim chart (Evidence of Use, or EOU)** comparing the patent claims with the allegedly infringing product, specifying product models and relevant data.

Furthermore, since **utility model and design patents** do not undergo substantive examination before grant, their stability is generally lower. To help recipients better

assess patent stability, the right holder may attach a **patent evaluation report** when sending the warning letter.

#### 4. Use Moderate Language

Avoid categorical expressions such as "patent infringement warning." Instead, consider using more neutral titles such as "notification letter" or "reminder letter." In previous cases, companies like Xuanpu and Jiangsu Xinghui were held liable because their letters used definitive infringement statements containing misleading information. Using **milder wording** helps reduce the risk of misinterpretation and potential legal disputes.

Patent infringement warning letters have a

**dual nature**. On one hand, they are an exercise of legal rights — a legitimate tool for right holders to protect their interests. On the other hand, they function within a **competitive market environment**, where improper use can amount to unfair competition.

The key to distinguishing between **legitimate enforcement** and **unfair competition** lies in balancing **the protection of rights** with **the preservation of fair competition**. It is therefore essential to both recognize the legitimacy of rightful patent warnings and to define clear boundaries that prevent abuse — thereby protecting competitors' lawful rights and maintaining fair market order.

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