

# RESEARCH ON INTELLECTUAL PROPERTY RIGHTS PROTECTION IN CHINA'S INTERNATIONAL TRADE

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With the deepening of economic globalization and trade liberalization, China is facing more and more intellectual property disputes in the world. This paper analyzes the current situation and problems of intellectual property protection in China's foreign trade, points out the current problems in China's intellectual property protection, and proposes solutions.

**Key words:** intellectual property; intellectual property protection; international trade.

## ИССЛЕДОВАНИЕ ЗАЩИТЫ ПРАВ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ В МЕЖДУНАРОДНОЙ ТОРГОВЛЕ КИТАЯ

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С углублением экономической глобализации и либерализацией торговли Китай сталкивается со все большим количеством споров об интеллектуальной собственности в мире. В данной статье анализируется текущая ситуация и проблемы защиты интеллектуальной собственности во внешней торговле Китая, указываются текущие проблемы в области защиты интеллектуальной собственности Китая и предлагаются решения.

**Ключевые слова:** интеллектуальная собственность; защита интеллектуальной собственности; Международная торговля.

I. Practical significance of China's strengthening intellectual property protection in foreign trade.

In recent years, with the progress of science and technology, the protection of intellectual property rights has been increasing, the status and role of intellectual property protection in international economy, science and technology, and trade has been historically enhanced, and the momentum of using intellectual property protection to set up trade barriers with the advantage of science and technology has also attracted the high attention of countries around the world. Only in a good environment of intellectual property protection can we promote the healthy and rapid development of international trade and investment. Strengthening intellectual property protection for China's participation in foreign trade is of positive significance for the establishment of China's knowledge-based economy, enhancing the core competitiveness of enter-

prises, and dealing with intellectual property barriers in developed countries.

II. Current situation of intellectual property protection in China's participation in foreign trade

1. The current situation of intellectual property protection in China's participation in foreign trade. Enterprises know little about the basics of intellectual property protection and do not pay attention to intellectual property work, resulting in the loss of a large number of intellectual property rights. In terms of trademark protection, many enterprises in China have not established brand awareness, do not have brand products and do not pay attention to trademark protection, especially the well-known trademarks of some famous enterprises are registered overseas. The phenomenon of advance pre-sale by unlawful merchants happens from time to time. Some enterprises do not know how to establish a trademark image, do not apply for trademark registration, do not know how to create and accumulate intangible assets, etc., although the products and services are very good [1]. Some enterprises have developed technologies and new products that meet the conditions for patent application, but have not yet applied for patent registration and obtained patent rights. From the analysis of certain enterprises' own situation in China, they do not pay attention to patent work, do not develop core technology of independent intellectual property rights, and rely solely on the low cost of domestic labor and the bad business of low-priced bidding sales, and malicious competition is the root cause of this incident. Imitating others' products involves intellectual property protection, so it has long attracted the attention of foreign enterprises, and China's accession to the WTO has made the other party wait for an opportunity to take on Chinese enterprises.

2. The current status of law enforcement in the construction of China's IPR legal system. First, in terms of intellectual property legislation. China's implementation of the IPR legal system started after it acceded to the Convention for the Protection of Intellectual Property Rights in 1980. In 1982, China produced the earliest IPR law, the Trademark Law. In 1985, China passed the Copyright Law, and in 1991, the Patent Law, as well as the Regulations on Software Protection, and the Anti-Unfair Competition Law. After 2001, IPR legislation progressed more. After 2001, intellectual property legislation progressed more rapidly, with the implementation of the Trademark Law, Patent Law and Copyright Law after major revisions, and the implementation of the new Regulations on the Protection of Computer Software on January 1, 2002 [2]. By now, the scope and level of protection of intellectual property rights with socialist Chinese characteristics are fully in line with international practice. Second, in terms of IPR enforcement. The number of first instance cases of various types of intellectual property rights handled by the courts nationwide increased from 101,000 in 2013 to 467,000 in 2020, an average annual

increase of 24.5%, 12.8 percentage points higher than the average annual increase in the total number of cases handled by the courts nationwide, reflecting the obvious growth in demand for intellectual property protection for high-quality economic and social development. The people's courts in China have attached great importance to the trial of intellectual property rights. Starting from the Supreme Court, courts at all levels nationwide, including superior and intermediate courts, have established corresponding intellectual property courtrooms. At present, the courts have, through reform, incorporated intellectual property adjudication into ordinary civil adjudication work. After twenty years of development, China's intellectual property business has also made great progress from the quantitative aspect.

3. Gaps in IPR protection in China. First, the gap in the overall implementation level of IPR protection. In domestic science and technology innovation, the ability and level of enterprises and institutions to create, master and apply intellectual property rights are not high, and there is a lack of innovation and protection of independent intellectual property rights. Chinese enterprises are still lagging behind in innovation and independent intellectual property protection. The effective number of invention patents in China is 3.597 million, the number of high-value invention patents per 10,000 population reaches 7.5, 73,000 international patent applications are accepted, and the national patent and trademark pledge financing amount reaches 309.8 billion yuan. The gap between China's PCT application volume and the overall level of IPR protection implementation in developed countries in the world. Second, the gap in the legal system of intellectual property protection. The gap between China's IPR protection system and that of developed countries is mainly reflected in legislation, judicial and administrative enforcement. Some final administrative decisions involving intellectual property rights lack the necessary judicial review and supervision. TRIPS establishes the principle of judicial review and examination of final administrative decisions on intellectual property rights, which is also the trend of today's world legislation. Infringement of intellectual property rights, especially the fight against counterfeiting and piracy, is not strong enough and the remedies for victims are not complete [3].

Reasons for the gap between China's intellectual property protection and that of developed Western countries

1. The management mode of the planned economic system has led to a weak awareness of patents in China and low technological innovation capability of enterprises. China has long been an agriculture-based country with no inherent requirement to protect intellectual property rights. The modern intellectual property legislation since the late Qing Dynasty is basically a product of pressure from Western countries. The planned economic system implemented in China after the founding of New China also rendered the IPR system as a whole non-existent.

2. Insufficient understanding of the necessity of intellectual property protection by law enforcement officers in some regions or departments. After the reform and opening up, China began to fully implement the intellectual property system, and the level of protection embodied in the legislation quickly reached or approached the world's advanced level. However, China's economy is still very underdeveloped and the market economy system is still very immature.

3. At the macro level, relevant government policies and systems are not yet coordinated and complementary, and a fast, flexible, efficient and reasonable coordination mechanism for intellectual property work has not yet been formed. Coupled with the influence of local protectionism and local economic interests, the intellectual property rights of some enterprises have not been fully protected. Although China has now developed a relatively complete legal system of intellectual property rights, in for example: TRIPS has eight parts and is a whole, but it is still managed by different institutions in China.

IV. Suggestions for countermeasures for the protection of intellectual property rights in China's foreign trade

1. Establish a unified intellectual property system. If China is to win the initiative in the increasingly fierce international competition, it must fully understand the importance of intellectual property from a strategic perspective, establish a unified and efficient intellectual property system and work coordination mechanism, allocate resources efficiently, and mobilize the innovation enthusiasm of intellectuals. China's intellectual property strategy should give equal importance to the protection, creation and application of intellectual property rights, i.e. attach importance to the protection of intellectual property rights, including the protection of one's own intellectual property rights, respect for foreign intellectual property rights and making full use of the innovation achievements of others, and attach more importance to the creation of intellectual property rights, i.e. on the one hand, through the introduction, the transformation, imitation and innovation of foreign intellectual property rights, and gradually realize "domestication", become independent intellectual property rights, on the other hand, but also through the continuous improvement of their own technological innovation capabilities to create their own intellectual property rights[4]. We should enhance the awareness of using various types of intellectual property rights in multiple ways and means, continuously improve the utilization rate of intellectual property rights, and build a perfect intellectual property strategy system.

2. Strengthen the awareness of intellectual property protection. As China has not established a modern intellectual property system for a long time, the awareness and legal knowledge of intellectual property of the whole society is still weak [5]. To improve the consciousness of implementing the intellectual

property system, we must strengthen the publicity and training of intellectual property knowledge and law. At present, enterprises should closely combine with their own actual situation, plan and target to enterprise leaders, managers, scientific and technological personnel and employees to carry out different contents and different forms of publicity and training of intellectual property rights, improve the awareness of all employees of enterprises of intellectual property rights, so that enterprises are truly aware of the importance of protecting intellectual property rights, and take it as an important strategic asset to improve their competitiveness. What should also be noted here is that strengthening the awareness of intellectual property protection is not only manifested in actively defending their own intellectual property rights and correctly applying the relevant laws to counter the abuse of intellectual property rights in other countries, but also respecting the intellectual property rights of others, not to counterfeit trademarks, pirate works and unreasonable imitation, imitation or transformation of patents, and to consciously use intellectual property rights to protect themselves and at the same time to discipline themselves, which has special significance for certain enterprises in China, especially export enterprises [6].

3. Establish an efficient intellectual property innovation mechanism. Patent technology innovation with original R&D as the core is the key to enhance the core competitiveness of enterprises. Our enterprises will face more difficulties in developing high-tech industries. Then, in this case, enterprises must make full use of the opportunity of being able to share global information resources after the WTO accession, learn from others' innovations within the international scope of the patent information database, and tap technological innovation points, so as to promote scientific and technological innovation to a new level. In addition, enterprises should actively implement brand strategy and strive to build international famous brands. Enterprises should attach great importance to the development and implementation of brand strategy, long-term commitment to carefully cultivate the brand, with a distinctive personality of the trademark as an important asset to develop the market and grow the enterprise, strengthen the trademark rights, management and protection, timely detection and suppression of violations of its legitimate rights and interests, to protect the enterprise's intellectual property rights, to maintain a good image of the brand. And while cultivating the brand, in addition to the importance of trademark work, publicity work, we should pay more attention to the brand technology and patent maintenance and other aspects of the basic work. In today's rapid development of science and technology, it is difficult to create a truly world-renowned brand if we leave quality products, quality after-sales service, continuous technological innovation, especially mastering and owning the core technology of independent intellectual property rights.

4. Improve the customs intellectual property protection system. Customs

implementation of trade-related intellectual property protection, can more effectively prevent and combat violations of intellectual property rights in import and export trade, protect the legitimate rights and interests of intellectual property rights, encourage foreign trade enterprises to compete fairly and operate legally, and maintain the order of foreign trade operations. First, in terms of protection methods. Most of the developed countries in the way of customs protection of intellectual property rights are active protection, while China is currently a combination of active and passive protection, should be shifted to active protection, expand the scope of responsibility for protection [7]. Secondly, on the issue of security deposit. The Criminal Law of the People's Republic of China provides for criminal liability for criminal acts of infringement of intellectual property rights. However, there are no clear provisions on how to connect the criminal law and customs regulations, which acts should bear criminal liability and which criminal liability should be assumed. It is recommended that the referral standard be formulated in accordance with the spirit of "the severity of the penalty is commensurate with the seriousness of the crime committed" in the WTO TRIPS Agreement. Finally, on the disposal of infringing goods. China's "Regulations on Customs Protection of Intellectual Property Rights" provides for the disposal method, the scope of infringing goods that should be destroyed is too large, and "all goods infringing copyright shall be destroyed" and other provisions lack the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and WCO's "Model Domestic Legislation on Customs Implementation of TRIPS". Flexibility, not conducive to the rational use of social wealth. The provisions of the Regulations on the auction of infringing goods and their use for social welfare are also too strict and lack operability in practice. Therefore, it is recommended that the Regulations be amended to read: "patent infringing goods and infringing marks are difficult to eliminate the infringing goods of exclusive trademark rights, harmful to public safety, hygiene, health, culture, morality or for other reasons should not be used to destroy the goods; the rest of the goods, may be sold to the rights holder or donated to social welfare causes." [8].

5. Improve the legal system of intellectual property rights. In terms of patent law, after two amendments in 1992 and 2000, the technical fields of patent protection have been expanded, the protection period of three types of patents has been extended and the level of patent protection has been improved. However, the current patent law needs to be adjusted and amended. Article 11 of the current patent law is silent on the "Validity of Patent Rights", "Statutory Damages", "Revocation Procedures" and "Limitation of Review Invalidation Procedures". Regarding Article 11, "Effectiveness of Patent Rights," "Statutory Damages," "Revocation Procedures," and "Limitation of Examination and Invalidation Procedures," etc. The model of unified protection of patent law and protecting them separately is in line with the TRIPS Agreement and the legislation of many countries [9]. In addition, the scope of protection of pa-

tents should be further improved, such as increasing the protection of new varieties of genetically modified plants and animals. In terms of trademark law, provisions should be made for new issues that have emerged in recent years, such as revocation procedures for malicious "infringement" of others' trademarks, reinstatement procedures for malicious revocation of others' registered trademarks, and enforcement procedures. Judicial decision, succession of trademark rights and application of the principle of prior rights. China still lacks unified legal protection for well-known trademarks and urgently needs to formulate the law on recognition and protection of well-known trademarks. With the rapid development of electronic computer and communication technology, the world scientific and technological revolution with electronic information technology as the core has arrived. The emergence of high-tech intellectual achievements urgently requires the revision and improvement of the legal system of intellectual property.

6. Improve the enterprise intellectual property protection mechanism. Learn to be familiar with and use the detailed international market competition "rules of the game", and strive to win the initiative in more and more international economic and trade activities in the future, is a serious issue facing our enterprises at present. To improve the level of international protection of intellectual property rights is the key to improve the competitiveness of Chinese enterprises. TRIPS" provides a unified and coordinated "minimum standard" for international intellectual property protection [10]. According to the provisions of TRIPS, if any party fails to provide adequate protection for foreign intellectual property rights in accordance with the agreement, the injured party may, in accordance with the rules of cross-retaliation in the dispute settlement procedure, impose cross-retaliation on the infringing party for trade in goods, which provides a very strict legal environment for the protection of enterprise intellectual property rights [10]. Our enterprises firstly equip with specialized personnel to study the agreement, learn, be familiar with and fully apply the rules of TRIPS, fully enjoy the rights and protect the legitimate rights and interests of enterprises while fulfilling their obligations; implement the strategy of scientific and technological innovation, strengthen scientific research, encourage inventions and creations, actively and fully utilize the breadth of intellectual property protection under TRIPS, possess independent intellectual property rights, and Form your own characteristics and advantages in order to be invincible in the development of science and technology economy.

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