

Protection and Regulation of Intellectual Property Rights in Multinational Enterprises

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Abstract. With the rapid development of economic globalization, the internationalization of intellectual property system has gradually come into the view of the public and multinational enterprises. Discussing the issue of intellectual property rights, many international organizations and countries themselves have relevant legal systems. They have also clarified the application of law in solving disputes. On the basis of the legal system of intellectual property established by various international organizations and the judicial practice of typical cases, this paper illustrates the legal application, protection and regulation of intellectual property. In fact, the whole international community has formed a relatively complete legal system, and there are universal solutions for dispute settlement and regulation. As far as China is concerned, on the basis of using the international community and the legal system of other countries for reference, it is necessary to further improve the legislation in the field of intellectual property rights, especially in the emerging fields with legal gaps.

Keywords: Multinational enterprises; intellectual property rights; protection and regulation.

1. Introduction

Developed countries and large multinational enterprises mostly consider that strict intellectual property system can promote economic development and reduce poverty in certain extent. So they spare no effort to promote the internationalization of intellectual property protection [1]. On an international scale, international institutions such as the World Intellectual Property Organization have also been established to promote international intellectual property policies. It can be assumed that intellectual property has become one of the important issues of the development of enterprises and national economic.

Multinational enterprises will inevitably involve the issues related to intellectual property rights in the process of transaction and operation. In the transnational operation of enterprises, as the core part, intangible assets with intellectual property have the characteristics of more strategic resources than tangible assets. They are also part of the most critical competitiveness in the transnational operation of enterprises. Therefore, today, many multinational enterprises essentially compete around the issues in intellectual property field. The exercise of intellectual property rights within a reasonable scope is protected and encouraged by international society. But if they abuse intellectual property rights, it will destroy the fairness between the two parties. This problem should be paid great attention to and be intervened. Otherwise, it will seriously affect the security and fairness of transactions, as well as damage the interests of citizens, enterprises and even the country. We need to seek international cooperation and support from various international parties.

This article is based on the analysis of typical cases in the field of intellectual property of multinational enterprises, and the comparative study of the protection and regulation of the entire international community. The author is trying to find a set of effective solutions to make sure all parties feel fair and justices.

2. Intellectual Property Rights and Its Application

2.1. Definition of Intellectual Property Rights

Intellectual property rights refer to the rights enjoyed by human beings in creation, invention, creativity and art, including patents, trademarks, works and process design. The legislative purpose of intellectual property legal system is also to reward invention and creation. Then it can promote scientific and cultural development. Its means is to give the inventor some exclusive right as the motive of invention and creation [1]. In the process of operation of multinational enterprises, intellectual property is mainly reflected in the patent rights of products and services and the trademark right of enterprises, which has become the most important tangible property in the operation order of multinational enterprises [2].

With the rapid development of the global economy, the proportion of knowledge-intensive products and services in trade and investment is increasing, and countries are paying more attention to intellectual property [3]. We need to pay more attention to intellectual property rights, recognizing that the field of intellectual property rights is of great significance to creating a fair business environment, promoting competition and innovative development among enterprises, and attracting sustainable inflows of foreign capital.

2.2. Legal Application of Intellectual Property Rights among Multinational Enterprises

In the process of trading among multinational enterprises, it is inevitable to encounter disputes related to intellectual property rights. In these cases, the application of the host country law, the home country law or the international law will become a focus of the use of intellectual property rights. This problem should be considered from multiple factors. First, in the framework of the internationalization of intellectual property rights, whether there are international laws and regulations generally recognized by various countries to solve disputes. Second, whether the host country and the home country are willing to solve this dispute and how they choose. They are more intended to formulate bilateral agreements or use methods which are generally acknowledged. Third, resolve disputes on the basis of negotiation or making a ruling.

2.2.1 The settlement mechanism of international organizations

The World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO) are now the two major international organizations that mainly formulate rules in the field of intellectual property rights. WIPO is responsible for the negotiation and management of intellectual property treaties, aiming to promote the internationalization of intellectual property protection among various countries. Thus, promoting the consistency of national laws on intellectual property protection. With the development of WTO, more and more member states are involved in trade disputes, which has derived the settlement mechanism related to intellectual property disputes of WTO. This mechanism has now become the mainstream international way of handling disputes.

Taking the TRIPS in WTO as an example, the author will analyze its solution process. The TRIPS Agreement is a trade-related intellectual property agreement signed by the 164 member states in WTO. It is an important part of the international intellectual property system [4]. It aims to effectively protect intellectual property rights as well as ensuring the reasonable enforcement measures and procedures of intellectual property rights in the meantime. If its members are involved in disputes in the field of intellectual property, the TRIPS Agreement must be enforced. At the same time, corresponding laws and regulations should also be formulated in the nation to implement double protection and ensure the effective protection of intellectual property rights.

The implementation of the force in the agreement is the most important part in intellectual property protection. When disputes occur between member states in the field of intellectual property rights, negotiations are often time-consuming and ineffective. Therefore, using this resolution mechanism can solve the problem effectively and quickly, and change the position of countries that do not comply with the agreement with compulsory force. There is a strict set of procedures in the agreement,

including submission of instructions, response from the respondent, deliberation and investigation, results and judgment, etc. In this process, a third person related to the interests of the issue can participate in the process, ensuring the openness and transparency of this process.

To sum up, the treaties formulated by international organizations have become the mainstream of the application of laws on resolving intellectual property disputes between countries.

2.2.2 Other ways of law application

For the countries that do not apply the rules of international law, the author considers that the two sides should first negotiate. If consensus is reached, the problem will be conducted in the maximum willingness direction of both parties. In the process of negotiation and the final evaluation results, whether the legislation of the host country and the home country should be considered and the accumulation of experience in judicial practice remains to be discussed. If the agreement is not reached through consultation, an international intellectual property lawsuit can be brought and submitted to the international intellectual property organization for mediation or ruling. Bilateral and changeable agreements may be used in the process of mediation. If the mediation does not work, the result will be adjudicated by international organizations. This is actually to solve the contradiction between the two sides from an international perspective.

2.3. Summary

In general, the dispute over intellectual property rights is mainly concentrated among WTO member states. The dispute settlement mechanism has a lot of room for application, and very few cases need to be handled through negotiation. The application of the law is ultimately subject to the international universal legal rules.

3. Protection of Intellectual Property Rights

3.1. Function of Intellectual Property Protection

3.1.1 Function 1: Maintain competitive advantages and promote innovation.

As a powerful weapon for multinational enterprises to maintain market competition, intellectual property rights can effectively promote enterprise innovation. Taking the third large-scale merger of multinational seed industry companies as an example, intellectual property protection has become one of its biggest driving forces [5]. In the field of seed industry, technology patents are a particularly important part, such as DNA recombination technology patents, breeding patents and so on. Bayer, one of the world's six largest groups in the seed industry, in the face of acquiring other groups, its CEO points out that: This combination will not only consolidate Bayer's position in the core business of breeding, but also promote its global innovation in breeding. After the merger, multinational seed companies have realized the effective allocation of seed industry resources and complementary advantages, promoted the integration of global seed industry technology and market resources, and formed an oligopoly competition pattern [5]. For these enterprises, intellectual property rights are a powerful weapon to maintain their competitive advantage in the market. For other enterprises that want to enter this market, it is necessary for them to strengthen technological innovation, vigorously cultivate independent intellectual property rights, and improve their own competitiveness, so as to obtain the opportunity to enter the market. This has played a positive role in promoting the innovation and future development of the whole seed industry field.

In conclusion, intellectual property can have the role of maintaining certain competitive advantages and encouraging innovation.

3.1.2 Function2: Establish industrial layout.

Patent is the core component of intellectual property of multinational enterprises. In essence, the role of patent protection and debt are the same, and the role of patent protection is to seek technology from the future [6]. As an increasingly important financial asset, intellectual property plays an

important role in the international economic and trade competition. The rise of many multinational enterprises depends on the global protection of intellectual property rights. As a technology innovative enterprise with a global layout, Goertek attaches great importance to the intellectual property in the field of virtual reality. Goertek has applied for 1,964 patents and established a series of complete industrial chain patent layout, such as hardware, software design and algorithm. If multinational enterprises want to establish a series of industrial layout and patent layout, they cannot appear and work without the support of intellectual property rights.

3.2. Problems and solutions of Intellectual Property Protection

The role of intellectual property protection in the trend of globalization has been newly defined, and at the same time, it also faces many difficult problems. On the one hand, with the rapid development of economy, many new things have emerged, and the laws in the field of intellectual property are not comprehensive. On the other hand, citizens, society and the state have a relatively weak legal awareness of intellectual property protection.

3.2.1 Incomplete legislation of intellectual property rights

In the context of rapid economic development, the new economy emerges in an endless stream, and many new fields have no relevant intellectual property laws on them.

On March 30, 2023, AIPPI China Branch had an in-depth discussion on the use of trademarks in the scene of Yuan universe [7]. Nowadays, things like the metaverse are more and more common and useful, but there is no unified and clear definition of them. There are also few related cases of such new forms of business in judicial practice, and even most of the practitioners in related fields have a vague understanding of their cognition. In recent years, in the field of artificial intelligence, there are also many disputes about intellectual property rights. There is little agreement between the content presented in the virtual environment and whether the design can be applied for patent. This inconsistency mainly lies in the scope of the definition and creative evaluation of virtual reality. The person in charge of international intellectual property rights also said: "High-tech industries such as artificial intelligence and big data are developing rapidly, and the evaluation criteria are still uncertain."

To solve this problem, the legal rules in the field of this new business form need to be further developed, which should not be limited to the analogy of the existing laws but should gradually establish a set of relatively independent rule system on the existing legal basis.

3.2.2 Weak awareness of intellectual property protection

In terms of the weak legal consciousness of intellectual property protection, it is mainly aimed at the field of intellectual property in China. Given the weak foundation of intellectual property protection for Chinese enterprises, we need to increase our attention to and initiative to intellectual property, becoming an active promoter of the globalization of intellectual property.

According to the current judicial practice, it is difficult for Chinese enterprises to seek legal resources to protect their rights in their overseas operation. At the same time, in the face of high litigation money and time costs, many enterprises will choose to hesitate or give up. This problem needs to be changed gradually. The core point is the continuous improvement of legislation in the field of intellectual property as mentioned above. On the basis of the system perfection, actively participate in promoting industrial globalization, enhance the discourse power, and then participate in the formulation of new rules.

4. Regulation of Intellectual Property Abuse

4.1. Main Forms of Abusing Intellectual Property

The abuse of intellectual property refers to the act of the right holder exceeding the provisions of intellectual property laws, improperly exercising the relevant rights, harming the interests of other

citizens and society or eliminating the restriction of competition [8]. In fact, intellectual property itself is a form of monopoly to a certain extent, and this monopoly must be strictly regulated, otherwise it will produce the result of abuse of intellectual property. The abuse of intellectual property from the global perspective is mainly divided into two categories: first, the right holder exceeds the scope of the legal right itself; second, the right holder does not exceed the legal right, but unreasonably restricts market competition or violates public policy. Therefore, it is not enough to regulate these behaviors only by the intellectual property law, but also to combine the anti-monopoly law and the anti-improper competition law.

In the next paragraph, I will take the first form as an example to analyze the regulation of intellectual property abuse from the perspective of anti-monopoly law.

4.2. The Regulation of the Abuse of Intellectual Property Rights from the Perspective of the Anti-Monopoly Law

From the perspective of anti-monopoly law, the abuse of intellectual property rights must meet two requirements: one is to be abused, and the other is that the behavior eliminates and limits the market competition.

4.2.1 The regulation of the USA

In 1890, the United States enacted the Sherman Act, which is a symbol of the emergence of antitrust law in the modern society [9].

The Microsoft monopoly case in the 20th century is a typical antitrust practice in the world. The federal justice bureau has blamed Microsoft for bundling, hurting consumers and is suspected of using its influence on limit competitors. At the same time, this monopolistic behavior also hinders technological innovation. In the end, Microsoft reached a compromise with the Justice Department, requiring PC manufacturers to freely choose the operating system and the initial interface, disclose the window software source code, and enable Microsoft competitors to write applications on the operating system.

4.2.2 The regulation of China

On August 1, 2023, the State Administration for Market Regulation announced the implementation of the Regulations on the Abuse of Intellectual Property Rights and the Exclusion and Restriction of Competition, which better balances the relationship between maintaining competition and promoting innovation. Compared with the old version of the regulation, more detailed for the operator has a dominant position in the market judgment. For multinational enterprises, the judgment criteria of whether they constitute a market monopoly.

In the process of regulation, we should always adhere to the modesty of the anti-monopoly law, trying to make the minimum influence of all. The basic value of the anti-monopoly law is to protect the competition. The evaluation of the competition behavior does not necessarily prohibit some competition behavior just because the competitors may be damaged by the competition [10]. Formal monopoly does not necessarily constitute a substantial monopoly. Therefore, we must strictly follow the law when it applies.

4.3. The Way to Improve the Use of Law in the Field of Regulating Intellectual Property Abuse in China

Legislation and enforcement in the antitrust field is a very rigorous task. It has an influence on the fair competition in the market and the innovative development of technology and culture. In general, China's anti-monopoly law legislation has many blanks, many provisions have not been detailed. Law enforcement also has little experience. Therefore, we need to learn from the useful experience of the international community, combined with the actual situation of our country, to formulate corresponding plans.

Firstly, we should conform to the international general practice, as well as combine China's national conditions reasonably. As far as the situation of the whole international community is

concerned, the regulation of intellectual property abuse is roughly the same, and they are restricted by international organizations such as the WTO [9]. Therefore, China's legislation should generally follow the international practice. At the same time, we should also improve the laws according to the specific development situation of our country.

Secondly, this regulation path should be operable and effective to ensure the implementation of the legal system. The definition of intellectual property itself has a scope. Therefore, it neither can be limited to a such small scope, nor can be indulgent. We need to accurately grasp a appropriate scale, so that law enforcement can be more specialized.

5. Conclusion

Intellectual property nowadays is playing a more and more important role in the international society. The exclusive nature of intellectual property decides that it should be cautious for us to handle problems with it. This paper first expounds the application of law in the field of intellectual property rights. In addition, the meaning and way of protecting and regulating intellectual property rights are analyzed. More attention should be paid to improve the laws in the intellectual property field. For China, we are far from reaching a complete legislation and enforce of law. More efforts should be paid to establish a fair market competition environment and scientific innovation environment.

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