

The Risk Compensation Mechanism of Intellectual Property Pledge Financing: American Experience and Enlightenment

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Abstract

The risk compensation mechanism of intellectual property pledge financing plays an important role in promoting the efficient use of intellectual property rights, promoting the financing of intellectual property pledge, and perfecting the service mechanism of "intellectual property finance ". In China, the risk compensation mechanism of intellectual property pledge financing is an active attempt to develop and perfect the intellectual property application market, which is still in its infancy, and there are many problems in operation. This paper investigates the risk compensation mechanism of intellectual property pledge financing in the United States, compares it with that of China, and puts forward that China should encourage private capital to enter the market of intellectual property pledge financing, construct the guarantee system of multi-party cooperation, establish and perfect the intellectual property transaction mechanism and trading platform, so as to benefit the perfection of the risk compensation mechanism of intellectual property pledge financing in China.

Keywords

Intellectual property pledge financing, the risk compensation mechanism, American experience, Chinese reference.

1. INTRODUCTION

In the process of economic globalization, science and technology plays an important role in promoting the development of national economy, and small and medium-sized enterprises of science and technology become a powerful force to promote the vigorous development of national economy. Scientific research projects of small and medium-sized science and technology enterprises need a lot of financial support, but the traditional financing mode is difficult to solve the urgent needs of enterprises for funds, and the problem of financing difficulty becomes the key factor hindering the development of small and medium-sized science and technology enterprises. The financing of intellectual property pledge has opened up a new way to solve the problem that it is difficult for small and medium-sized science and technology enterprises to obtain funds, but because of the intangible nature of intellectual property assets and the instability of value, financial institutions are not very happy to provide loans through the form of intellectual property pledge. Even if they choose such form, they are more likely to lend to large or state-funded science and technology enterprises. For this reason, China has established the risk compensation mechanism of intellectual property pledge financing to deal with the problem that it is difficult for small and medium-sized enterprises of science and technology to obtain loans. But the risk compensation mechanism of China is still in the initial stage of exploration and is not perfect, it can learn from the relevant experience of foreign countries to make up for the deficiency of our own mechanism. The United States pays more attention to intellectual property than China, and has made a long-term exploration and practice in the field of intellectual property pledge financing, which has formed a relatively

mature system. Although the name and practice of risk compensation are not the same as that of China, it also plays the role of compensating financial institutions for the risk of lending, and has certain reference significance. This paper makes a comparative analysis of the risk compensation mechanism between the United States and China in order to provide some experience for China to improve the relevant mechanism.

2. THE INVESTIGATION ON THE RISK COMPENSATION MECHANISM OF INTELLECTUAL PROPERTY PLEDGE FINANCING IN THE UNITED STATES

As the world's largest capitalist country, the United States has always pursued a market economy, not through government manipulation, but through big invisible hands of market to regulate the domestic economy. Because of the local market economy, the compensation mechanism of intellectual property pledge financing risk is formed based on the market-oriented mode and the market-oriented mode led by the government. The market-oriented mode led by the government is the SBA, and the market-oriented mode is the mechanism of Certified Asset Purchasing Price, which is also named the CAPP.

2.1. The Market-Oriented Mode Led By the Government——SBA

As a major intellectual property country, the United States established the American Small Business Administration (the SBA)in 1953 to promote the healthy development of its intellectual property rights,it does not provide loans to small and medium-sized technology enterprises, but serves as an interactive platform between small and medium-sized technology enterprises and financial institutions.[1] The SBA mainly provides the following three types of services for small and medium-sized technological enterprises: the first is to authorize venture capital companies to invest in small and medium-sized technological enterprises, which means venture capital companies after auditing and obtaining SBA authorization inject funds into small and medium-sized technological enterprises through enhanced credit; the second is to provide loan guarantees for small and medium-sized technology-based enterprises, which means when the enterprise is unable to repay the loan, the SBA compensates the losses of the financial institutions in accordance with the pre-agreed proportion; the third is to provide re-guarantee for the guarantee enterprises of small and medium-sized technology-based enterprises.[2] The second service, which is similar to the risk compensation mechanism in China, shares the risks of financial institutions to a certain extent and alleviates the problem that small and medium-sized technological enterprises are difficult to obtain financing.

2.2. The Market-Oriented Mode——CAPP

In the development of intellectual property pledge financing mode, the realization of intellectual property pledge is also an important factor that hinders the small and medium-sized enterprises of science and technology to obtain financing. To solve this problem, American M-CAM company has created a new intellectual property pledge financing mode——the Certified Asset Purchasing Price (the CAPP), which does not provide loans to small and medium-sized technology enterprises, but provides credit guarantee for this type of enterprise like the SBA mode. Differently, the SBA mode provides government guarantee, while the CAPP mode provides business guarantee. [3] The operating procedures of the CAPP mode are as follows: First, the M-CAM company should evaluate the intellectual property right applying for credit guarantee, and then decide whether to provide credit guarantee. Then, it provides credit guarantee for intellectual property that meets the requirements after evaluation, and carries out real-time monitoring according to the loan amount, the loan cycle, intellectual property stability. Finally, when the financing enterprise is unable to repay the loan, the M-CAM company acquires the intellectual property right from the financial institution at the pre-agreed price. [4] Through the promotion of the above steps, the CAPP mode has solved the problem that

intellectual property pledge is difficult to realize, reduced the financing risk of financial institutions, and promoted the promotion of intellectual property pledge financing.

Whether the state-led market-oriented SBA mode with certain government intervention in the market or the market-oriented CAPP mode with purchasing service for pledge, it has certain reference significance for the financing risk compensation model of intellectual property pledge under the leadership of Chinese government. They are not only conducive to the free development of the market economy, but also conducive to reducing the financing risk of financial institutions, and also conducive to solving the problem that small and medium-sized technology-based enterprises are difficult to obtain financing.

3. THE COMPARISON BETWEEN THE RISK COMPENSATION MECHANISM OF INTELLECTUAL PROPERTY PLEDGE FINANCING IN AMERICA AND CHINA

3.1. The Main Mode of Risk Compensation for Intellectual Property Pledge Financing in China

Due to the high risk in the value and realization of intellectual property rights, the situation of financing by pledge of intellectual property rights in China is not clear. It is necessary to lead financial institutions and other subjects to participate in financing by the way of government guidance. Then the risk compensation mechanism of intellectual property pledge financing in China arises at the right moment. The mechanism encourages financial institutions to issue loans through government-provided guarantees and attracts guarantee companies and insurance companies to join the financing market. The main form of the mechanism is the risk compensation fund, whose funds are jointly composed by the central and local finance departments. Normally, the proportion of central finance is 1/2 of the risk compensation fund, and sometimes it can reach 2/3 of the risk compensation fund. [5]

According to the actual situation in the current pilot areas, the main operating entities of the risk compensation fund mainly include banks, insurance companies, companies providing guarantee services, and companies engaged in fund management. The four types of subjects form the following four modes according to their respective functions: the first is the risk compensation fund mode led by banks; the second is the risk compensation fund mode led by guarantee companies and banks; the third is the risk compensation fund mode led by insurance companies and banks; and the fourth is the risk compensation fund mode led by banks, insurance companies and guarantee companies. The operating entities of the above four modes share with the risk compensation fund the losses caused by the financing enterprises unable to repay the loans according to the proportion agreed in advance. The recovery of the loan is the responsibility of the entities of the operation of the above four modes, and the part of the recovery is similarly distributed according to the proportion agreed in advance. In the case of the mode in which guarantee companies or insurance companies are involved, the risk compensation fund also subsidizes the guarantee companies or insurance companies appropriately to stimulate them to invest in the financed project.

Although the operation mode of risk compensation fund in China has the above four structures, the participants of risk compensation fund are not completely open. At present, in the operation mode of risk compensation fund in all parts of our country, the risk compensation fund mode dominated by banks occupies the majority, and the risk compensation mode of subsidizing guarantee companies and insurance companies is rarely applicable, which results in the lack of corresponding risk guarantee in guarantee and insurance in the case of financing enterprises unable to repay loans. This situation is not conducive to the optimization of the risk of pledge financing, nor to the healthy development of Chinese intellectual property market.

3.2. The Comparison Between the Risk Compensation Mechanism of Intellectual Property Pledge Financing in China and the United States

Compared with the risk compensation mode in China, the characteristics of the SBA mode are mainly manifested in the following aspects: First, the government does not provide financial support and subsidies. SBA only provides services such as credit guarantees, except appropriate subsidies. The risk compensation fund of China gives appropriate subsidies to the enterprises that purchase the guarantee insurance and patent insurance and the guarantee companies that bear the guarantee liability. Second, the establishment period of guarantee is longer. The guarantee provided by the SBA have a longer period, which is usually 5-20 years, depending on the stability of the value of intellectual property and the amount of the financing enterprise's loans. But Chinese risk compensation fund establishment period is mostly 1-2 years, which is not conducive to the science and technology small and medium-sized enterprises focus on their own business expansion, quickly enhance their own strength. Third, the risk borne by the government is relatively smaller. The amount of guarantee provided by the SBA are so small that the risk taken by the SBA is limited. The SBA also requires the shareholders of the financing enterprise to guarantee the financing of the enterprise with their own private property. [6] This method ensures the reliability of the financing behavior of the enterprise and effectively reduces the risk borne by the state. Although the risk compensation fund of China provides the national guarantee as the SBA mode of the United States, the risk borne by the government of the United States is much smaller than that of China, which is conducive to enterprises to strengthen their self-management and continue to grow stronger.

Compared with the risk compensation mode of China, the characteristics of the CAPP mode are mainly manifested in the following aspects: First, the scope of intellectual property rights that can be pledged loans is relatively wider. The range of intangible assets which can be used to pledge loans in the CAPP mode is wider , including not only common patent, trademark, copyright, but also air rights and other intangible assets. But the risk compensation fund in most areas of China is only for patent right, and the current risk compensation mechanism lacks the corresponding compensation policy for trademark right, copyright and other intellectual property rights. Second, the supervision measures are perfect. After the credit guarantee is determined, the M-CAM company will monitor the intellectual property right in time according to the loan amount, loan cycle, intellectual property stability and so on. [7] While the regulatory measures in China still need to be improved and developed. Third, commercial companies provide purchasing service. Before providing credit guarantee, the M-CAM company evaluates the value of intellectual property rights, the stability of financing enterprises. When financing enterprises can not repay loans on time, the M-CAM company acquires the intellectual property rights pledged by financing enterprises to financial institutions at a predetermined price, so as to reduce the financing risk of financial institutions and reduce the financing losses of financial institutions. [8] But Chinese mode is through the risk compensation fund such policy fund to reduce the financing risk of the financial institution. In the course of the operation of this mode, the government shares the main risk of financing, not through the role of the market itself like the United States.

4. THE ENLIGHTENMENT OF AMERICAN RISK COMPENSATION MECHANISM OF INTELLECTUAL PROPERTY PLEDGE FINANCING OF TO CHINA

Although the risk compensation mechanism of the United States is different from that of our country, it is constructed on the basis of the basic situation of their country, which not only adapts to the intellectual property market of their country, but also accords with the financial development trend of their country. Compared with the United States, China should select the

beneficial experience according to the current intellectual property market environment and the basic financial situation so as to perfect the risk compensation mechanism of China.

4.1. Guide Private Capital Into the Financing Market of Intellectual Property Pledge

The CAPP mode of the United States is unlike general risk compensation mechanism. Because the M-CAM company not only provides credit enhancement for financing enterprises, but also takes advantage of their own strength in dealing with intangible assets business to participate in the operation and management of intellectual property rights, and realize the real-time monitoring of intellectual property rights used for pledge loans, which not only ensures the preservation and appreciation of intellectual property rights, but also consolidates the financial institutions and their own financing interests. Therefore, China should pay attention to cultivate private guarantee institutions, actively guide private capital into the market, and reduce the pressure of the government to bear risks. However, because of the profit-driven nature of commercial guarantee, private guarantee institutions often choose enterprises with small intellectual property risk, good income and high barriers to guarantee. [9] This kind of choice tendency makes those small and medium-sized technology enterprises that lack financial support do not fundamentally solve their long-term development demand for funds. And the current degree of marketization of intellectual property pledge financing in China is not high enough, and still needs the guidance of the government. As a result, the CAPP mode can be used as a supplementary form of risk compensation fund, [10] which is beneficial to share the financial risks of financial institutions and government, to deal with the lack of funds for small and medium-sized science and technology enterprises, and to improve the marketization of intellectual property rights.

4.2. Construct the Guarantee System of Multi-Subject Cooperation

The guarantee system of the SBA mode and the CAPP mode of the United States has the dual function of government guarantee and commercial guarantee, which is of great reference to perfect the risk compensation mechanism of intellectual property pledge financing in China. Although China can not establish a double guarantee system like the United States at present, it can transform the existing model according to our national conditions. In terms of the risk compensation fund mode led by banks, insurance companies and guarantee companies, China can replace the Small Business Administration of the United States with the risk compensation fund, and replace the M-CAM company with guarantee companies and insurance companies at the same time. Through the way above, the resulting guarantee system with multi-subject participation has high stability and can minimize the risk of financing. Now that the degree of marketization of China's economy is not high enough, it is necessary for the risk compensation fund to subsidize guarantee companies and insurance companies, so that this mode can be popularized in the pledge financing market of China.

4.3. Establish and Perfect Intellectual Property Trading Mechanism and Trading Platform

With the development of Chinese intellectual property pledge financing work at a deeper level, in order to promote the faster and more convenient circulation of intellectual property, it is urgent to improve the intellectual property trading mechanism and build the intellectual property trading platform. At present, China can draw lessons from the SBA mode, activate the intellectual property trading market through marketization to reduce the risk of government guarantee to a certain extent. The establishment of intellectual property trading mechanism and trading platform can be started from the following aspects: The first is to establish a unified intellectual property trading center to solve the current situation of the decentralization of intellectual property transactions and the disorder of intellectual property transactions. The

second is to formulate unified standards to manage intellectual property transactions and standardize intellectual property transactions behaviors. The third is to use information networks to establish intellectual property databases, and search for various intellectual property information, and regularly update the information in the database. In addition, while sharing risks for financial institutions such as banks, reducing the concerns of financial institutions and increasing the enthusiasm of financial institutions to participate in the financing of intellectual property pledge, the government should also pay attention to the stimulation of the potential of science and technology small and medium-sized enterprises, so that the enterprises can strengthen their own guarantee. [11]

5. CONCLUSION

Through the investigation and exploration of the risk compensation mechanism of intellectual property pledge financing in the United States, we can find that the United States has a trend from the initial government-led mode to the market-led mode, which is more conducive to stimulating the willingness of all parties to participate in the financing, and more conducive to the development of intellectual property pledge financing business. At present, Chinese intellectual property pledge financing risk compensation mechanism belongs to the government-led mode, but in order to adapt to the increasingly vigorous intellectual property market, China should gradually turn to the market-oriented mode under the guidance of the government, actively introduce private capital, and gradually form a financing market in which private capital occupies the dominant position and government subsidies are in the secondary position; guide multiple subjects into the market of intellectual property pledge financing, so as to minimize the risk of financing; establish an intellectual property trading platform to provide a convenient way for the circulation of intellectual property rights. At present, Chinese intellectual property pledge financing risk compensation mechanism is still in its infancy, there are inevitably shortcomings and shortcomings, Therefore, it must be further explored and tried in research and practice. I believe that with the continuous accumulation of practical experience, this mechanism will be increasingly perfect, so that it can create a good environment for the development of intellectual property rights in China.

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