

Brief Discussion on the Object Scope of Intellectual Property Pledge Financing

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Abstract

In intellectual property pledge financing, the object of pledge is the foundation, and it is also the most critical factor that determines the difference between this system and other related systems. The scope of the object of pledge is related to the development of intellectual property pledge financing, and the role of intellectual property in promoting supply-side structural reform, promoting high-quality development and building a modern economic system. In the practice of intellectual property pledge financing, we should constantly improve the pledge objects of traditional intellectual property rights such as copyright, patent right and trademark right, and give full play to their functions. Study and expand the scope of intellectual property pledge, actively explore the feasibility of taking trade secrets, geographical indications, layout design of integrated circuits, new varieties of plants as intellectual property pledge, and further broaden the financing channels of enterprises, thus forming a solid theoretical foundation and operational scope of intellectual property pledge object in practice.

Keywords

Intellectual property; Rights Pledge financing; Object.

1. Foreword

Protection and application are the two most important "driving wheels" in the intellectual property chain. Intellectual property pledge financing is a major measure to realize China's national intellectual property strategic policy of "encouraging innovation, effective application, legal protection and scientific management". The Outline of the 14th Five-Year Plan for National Economic and Social Development and the Long-term Goals for 2035 points out that the system of intellectual property protection and application should be improved, and financial institutions should be encouraged to develop technology and finance products such as intellectual property pledge financing. The object directly determines the scope of intellectual property that can be pledged, and intellectual property is a generalization of various rights. In practice, due to the unclear provisions of the Civil Code and other relevant laws, the development of intellectual property pledge financing in China focuses on patent rights, trademark rights and copyrights, and non-traditional intellectual property rights such as geographical indications, trade secrets, new plant varieties and layout of integrated circuits are difficult to enter the object scope of intellectual property pledge financing. To strengthen the effective use of intellectual property, it is necessary to study its object. Therefore, the research on the object of intellectual property pledge should be the top priority in the research of intellectual property pledge system. [1]

2. Intellectual Property Object and Its Application Status in Pledge Financing

2.1. Classification of Intellectual Property Objects

Intellectual property, also known as 'the right to belong to knowledge', refers to the rights enjoyed by the obligee to the labor results created by his intelligence in social practice. In general, intellectual property has time constraints. Article 123 of Civil Code clearly stipulates that civil subjects enjoy intellectual property rights according to law. Intellectual property is the exclusive right enjoyed by the obligee according to law on the following objects: (1) Works. (2) Invention, utility model and appearance design. (3) Trademark. (4) Geographical indications. (5) Business secrets. (6) Integrated circuit layout design. (7) New plant varieties. (8) Other objects stipulated by law. According to the theory of intellectual property, the object of intellectual property stipulated in Article 123 of Civil Code can be divided into the object of traditional intellectual property, the object of new intellectual property and other objects stipulated by law.

2.1.1. Object of Traditional Intellectual Property Rights

According to Article 2 of the World Intellectual Property Organization Convention, traditional intellectual property rights include the following related rights: the right to literary, artistic and scientific works. On the right of performers to perform, record and broadcast. About people's right to invent in all fields. Right to scientific discovery. Right to industrial design. Rights on trademarks, service trademarks, manufacturer names and marks. On the right to stop unfair competition. And all rights from intellectual activities in the fields of industry, science, literature or art. According to the provisions of the Civil Code, the object of traditional intellectual property rights in China is the object of copyright-the object of works, patents-inventions, utility models, designs and trademarks.

First, the work. According to the provisions of China's Copyright Law, works refer to intellectual achievements that are original and can be expressed in a certain form in the fields of literature, art and science, including: (1) Written works. (2) Oral works. (3) Artistic works of music, drama, folk art, dance and acrobatics. (4) Works of art and architecture. (5) Photographic works. (6) Audio-visual works. (7) Engineering design drawings, product design drawings, maps, schematic diagrams and other graphic works and model works. (8) Computersoftware. (9) Other intellectual achievements conforming to the characteristics of the work. Article 2 of the Copyright Law stipulates that works of Chinese citizens, legal persons or other organizations, whether published or not, shall enjoy copyright in accordance with this Law. As a kind of right in intellectual property, copyright includes thirteen sub-rights, such as publishing right, authorship right and amendment right, which are divided into property right and personal right according to the different attributes of each sub-right.

Secondly, invention, utility model and appearance design. Invention refers to a new technical scheme proposed for products, methods or their improvement. Different from the invention, the utility model refers to a new technical scheme which is suitable for practical use and put forward according to the shape, structure or combination of products. Design, which is generally the shallowest invention and creation, refers to a new design which is rich in aesthetic feeling and suitable for industrial application, which is made on the whole or partial shape, pattern or their combination and the combination of color, shape and pattern of products. Both the utility model and the design emphasize practicality. According to China's Patent Law, the above three kinds are collectively referred to as inventions. Inventors enjoy patents for their inventions, but there are different restrictions on the use of patents obtained for different inventions.

Third, the trademark. Trademark refers to characters, symbols, patterns and other signs engraved or printed on goods, packages or services that are different from other products. Any sign that can distinguish the goods of natural persons, legal persons or other organizations from those of others, including characters, figures, letters, numbers, three-dimensional signs, color combinations and sounds, as well as the combination of the above elements, can apply for registration as a trademark. According to the relevant provisions of China's Trademark Law, some marks or names are restricted. Restricted marks or names may not apply for registered trademarks and are not protected by national laws. For registered trademarks, the registrant enjoys the exclusive right of trademark. At the same time, the registered trademarks are distinguished due to their different use scope and ways, and the market value of different trademarks is also different.

2.1.2. New Intellectual Property Objects

With the rapid development of science and technology, the scope of intellectual property protection objects is expanding, and new intellectual achievements, such as computer software, bioengineering technology, genetic technology, new plant varieties, etc., are also recognized as intellectual property protection objects all over the world. According to the Civil Code, the new intellectual property objects in China mainly include geographical indications, trade secrets, layout design of integrated circuits, new varieties of plants and so on. [2]

First, geographical indications. Geographical indications have strong regionality and are mainly used to identify the origin of a product. The management and protection of geographical indications in China is mainly carried out by the State Trademark Office in the form of trademark registration. In order to better protect geographical indications, the State Administration for Industry and Commerce has issued the Measures for the Administration of Special Signs for Geographical Indications Products, which establishes exclusive signs for geographical indications that can be used on products applying for registration, but requires that geographical indications and exclusive signs cannot be used separately.

Second, trade secrets. As a kind of intellectual property rights, trade secrets emphasize confidentiality, and at the same time, they require all people to take measures to protect them, which can bring real economic benefits. There is no specific law on the protection of trade secrets in China, which is mainly reflected in the Anti-Unfair Competition Law or some professional industry regulations. Thirdly, layout design of integrated circuit. Mainly aiming at the right of manufacturing integrated circuits or forming components, according to the relevant provisions of the Regulations on the Protection of Layout Design of Integrated Circuits, the right holder of layout design enjoys exclusive rights to the layout design of integrated circuits, allowing it to copy and make necessary commercial use.

Finally, new varieties of plants. The biggest feature of new plant varieties is that they have four characteristics, namely novelty, consistency, stability and specificity. Wild varieties cultivated artificially or newly discovered can be used, but they need to be named. According to the relevant provisions of the Regulations on the Protection of New Plant Varieties, the units or individuals who have completed breeding shall enjoy exclusive and exclusive rights to the authorized varieties.

2.1.3. Other Objects Stipulated By Law

As a legislative technique, the other-object-covering clause stipulated by law includes all items that are not included in other clauses or are difficult to include or can not be predicted at present. Undercover clause is a common legal expression in legal texts, mainly to prevent the irregularity of laws and the vicissitude of social situations. Because once the law is enacted, it has a relative lag because of its fixity. Moreover, due to the limitations of subjective cognition and other aspects, the law makers cannot accurately predict all the possibilities and situations to be regulated by the law. Therefore, it is necessary to minimize the legal defects caused by the

lack of human subjective cognition through these comprehensive clauses. In order to maintain the relative stability of the law, law enforcers can adapt to the objective needs of the social situation according to the spirit and principles of the law and apply some new situations through this comprehensive clause. Article 123 of the Civil Code, when specifying the object of intellectual property rights, also specifies the exhaustive clause on the basis of enumeration, which is mainly to leave a legal gap for the object of rights that may be newly named in the future.

2.2. The Current Situation of the Application of the Object of Intellectual Property Pledge Financing in China

China has been stranded for a long time since it first proposed that intellectual property rights can be pledged for financing in 1996. After 2006, the National Copyright Administration, the State Intellectual Property Office and the State Administration for Industry and Commerce successively formulated the Measures for Copyright Pledge Contracts, the Interim Measures for Registration and Management of Patent Pledge Contracts, and the Registration Procedures for Trademark Exclusive Right Pledge, which clarified several objects that can be pledged and the pledge financing of intellectual property rights gradually entered the right track after the procedures. [3] In recent years, China has increased the promotion of intellectual property pledge financing, but there are still many problems in the scope of the object of intellectual property pledge. Both Guarantee Law and Property Law bring patent right, trademark right and copyright into the object of legal relationship of intellectual property guarantee. Article 440 of Civil Code further clearly stipulates that property rights in intellectual property rights such as copyright, patent right and exclusive right to use registered trademark can be pledged. However, in the field of intellectual property pledge financing, before 2017, patent rights stood out in the object of intellectual property pledge financing. Since 2018, this situation has improved, and patent rights and trademark rights keep pace. Data show that in 2019, the amount of IP pledge financing in China reached 151.5 billion. In practice, because the Civil Code and other relevant laws and regulations are not clear, non-traditional intellectual property rights such as geographical indications, trade secrets, new plant varieties and layout of integrated circuits are difficult to enter the object scope of intellectual property pledge financing. The narrow scope of intellectual property pledge financing objects limits the scope of intellectual property objects that can be used for pledge to a certain extent, which is not conducive to the overall development of intellectual property pledge financing field.

3. The Improvement of the Object in the Pledge Financing of Traditional Intellectual Property Rights

Intellectual property pledge is a kind of pledge of rights. Therefore, if the object of intellectual property becomes the object of pledge financing, it must have the basic attributes of intellectual property pledge, that is, it should be property, and it must be property in private law. This condition is the basic condition that the object of intellectual property has market value that can be used for free circulation. However, having the property in private law does not mean that this object can become the object of pledge financing. Besides each object has its own unique features, it should be comprehensively judged in combination with some specific requirements of existing policies on the practicality of the object of pledge financing of intellectual property rights. Therefore, whether a single object of intellectual property rights can become the object of pledge financing needs to be analyzed from the aspects of property, openness and practicality, and cannot be generalized.

3.1. The Rationality of Copyright Pledge Can Be Expected

Among many sub-rights under copyright, personal rights and property rights have a clear division, and the rights of publication, authorship and amendment have an inseparable personal relationship with the author. Of course, there is no possibility of transferring or pledging these rights with identity representatives, but for other property rights, it has been made clear at the legislative level that they can be the object of intellectual property pledge, which means that the property rights in copyright can be used for market circulation. The circulation of these property rights can be managed and regulated by the autonomy of the actor and the supervision of the relevant state departments. In real life, the process of pledge operation is relatively standardized and practical, which has the conditions to become the object of intellectual property pledge financing.

The so-called expectable copyright refers to the rights that a work that has started but is still under creation can expect to enjoy when the work is completed. In real life, although there are few works, there are cases where unfinished works are pledged or rights are replaced. There are different opinions in academic circles on whether the exercise of the rights of expectant copyright should be restricted. At the legislative level, there is no clear regulation on expectant copyright in China. [4] Anglo-American law system's attitude towards expectant copyright is more inclined to a high degree of autonomy of will. As long as both parties reach an agreement on a legal basis, they can pledge with reference to copyright without excessive intervention. The civil law system is more inclined to protect the author's personal rights, and thinks that the value and completion of the expected works are highly dependent on the author's person. If it is allowed to set quality freely, the uncertainty and risk are too high. At present, China adopts "dualism", that is, considering both parties' expressions of intention and their own risks, which is not explicitly advocated but not explicitly prohibited. From the perspective of jurisprudence, this expectant right and copyright right are essentially the same, and both contain high economic value. [5] Under the condition of market economy, it can be expected that the permission of copyright can further stimulate the development of intellectual property pledge financing field. The nature of expectable copyright is similar to the expectable right of the sold auction house, but the difference is that the expectable right of the sold auction house is protected by legal procedures such as housing advance notice registration, while the legal protection of expectable copyright is still blank.

3.2. Pledge of Patent Application Right Is of Great Significance

In many related documents, such as Patent Law, it is clearly stated that, except under legal circumstances, no one may use the patent obtained by others without the permission of the patentee, and a certain fee shall be paid for using the patent of others. These regulations affirm the economic value of patent right from the legislative level. In the process from patent application to patent acquisition, in order to implement the principle of fairness, online publicity is needed, so patent rights are also open to a certain extent. Patent right, as the object of intellectual property pledge financing, is relatively controversial.

In practice, the controversy is also concentrated on the right to apply for a patent. Although the right to apply for a patent can be transferred in the existing law, some scholars have questioned it, arguing that the right to apply for a patent is obviously different from the patent right, which has strong personal dependence and disappears once it is applied, causing practical difficulties in the later process of pledge financing, so it is not suitable to be the object of pledge. In addition, the value of patent application right directly depends on the patent applied by the applicant. The evaluation of patent application right is essentially to evaluate the patent to be applied for. If other rights such as patent application right and patent use are listed as the objects of pledge financing, it is easy to cause repeatability of pledge amount. This paper holds that it is of great significance to explore that the right to apply for a patent becomes the subject of pledge by

analyzing the future direction of China's economic development. The patent application right becomes the pledge object, which can solve the financing problem of small and medium-sized enterprises, and promote the rights to be changed from static protection to dynamic utilization.

3.3. Collective Trademarks and Certification Trademarks Cannot Be the Object of Intellectual Property Pledge Financing

Trademark rights can be subdivided into collective trademarks, service trademarks, commodity trademarks and certification trademarks according to their different uses. Commodity trademarks and service trademarks are commodities applied for by natural persons, legal persons or other organizations for their products or services in the process of production and operation, mainly for improving the recognition of their products or services in shopping malls, so they have certain economic value, and the value will be continuously improved with the expansion of the market share of products or services. In order to improve the popularity of products, it is an inevitable choice to publicize and disseminate trademarks. In the market, there have been many cases of joining, using, sharing and transferring commodity trademarks, and the convergence and standardization of various links have matured and standardized. Therefore, the trademark rights of commodities have gradually been recognized by the field of intellectual property pledge financing in recent years.

Collective trademark is to express the membership of users in an organization, and the examination of certification trademark is controlled by an organization with supervisory power to prove the quality of a certain product or service. Compared with commodity trademarks and service trademarks, collective trademarks and certification trademarks are a kind of qualification assessment, which is the recognition of someone, a certain product or service, so they are more dependent. If only these two trademarks are transferred without products or services, there is no great market significance, and the same cannot produce high economic value. In addition, collective trademarks and certification trademarks are all open, but whether someone is a member of the organization or whether a product or service comes from a recognized place of origin depends not only on the recognition of trademarks, but also on the recognition of the organization that acquired trademarks. If it is recognized that collective trademarks and certification trademarks can be transferred, it will give some unqualified people or companies an opportunity, which will greatly reduce the value of trademarks and lose their market role. Therefore, collective trademarks and certification trademarks can not be the objects of intellectual property pledge financing for the time being.

4. The Perfection of the Object in the New Intellectual Property Pledge Financing

4.1. The Pledge of Geographical Indications Is Feasible

Geographical indications, as a kind of recognition of production sources, have certain economic value, but the embodiment and transfer of this value have certain regionality, and the scope of transferable use is too limited. [6] The legal attribute of geographical indications is somewhat vague in academia, because although it is an object of intellectual property rights, TRIPS clearly States that "the user of geographical indications cannot be an enterprise or an individual in a certain region", and geographical indications are more regional, and the user cannot be an individual or an enterprise. In August, 2019, the Notice of China Banking and Insurance Regulatory Commission, State Intellectual Property Office and National Copyright Administration of China on Further Strengthening Intellectual Property Pledge Financing clearly pointed out to strengthen the innovation of intellectual property pledge financing service, "study and expand the scope of intellectual property pledge, actively explore the

feasibility of geographical indications and integrated circuit layout design as intellectual property pledge, and further broaden the financing channels of enterprises". According to Article 440 of the Civil Code, the pledge of intellectual property rights should meet the requirements of legal and effective rights, property value and transferability according to law. Geographical indications, as the object of intellectual property pledge, meet the requirements of legality, value and transferability. It is feasible to use geographical indications as pledge of intellectual property for pledge financing. [7]

4.2. Pledge of Trade Secrets in Intellectual Property Pledge Financing

In the definition of trade secret, it clearly indicates that it needs to have actual economic benefits or can be used commercially to create commercial value. Some scholars believe that trade secrets do not belong to property rights, but are a kind of legal interests besides property rights. However, no matter whether it is a property legal interest or not, it cannot be denied that trade secret is a kind of secret that is not known to outsiders and is protected by the organization that uses it. [8] Of course, it is not open and assignable. On the pledge of trade secrets, the academic circles have basically reached a consensus: First of all, the change of the times from "heteronomy society" to "self-discipline society" requires that we should fully respect the autonomy of the parties' will, and under the premise of the principle of "legal property rights", give the pledge system broad development space. Secondly, from the realistic demand, trade secrets are transferable property rights with great value. [9] In order to meet the needs of economic development, trade secrets that meet the requirements of quality should be included in the category of quality subject as much as possible. Finally, trade secrets, as intangible assets of enterprises, should not be restricted by registration, publicity and confidentiality in practice, which can be solved through institutional innovation.

4.3. The Rationality of Layout Design of Integrated Circuit as the Object of Intellectual Property Pledge Financing

The 21st century is destined to be an era of big data. The layout design of integrated circuits is the most basic and core thing in the whole information industry, and its role in promoting the overall economic development is self-evident. In science and technology enterprises, the value of chips is reflected in the integrated circuit design contained in them. The transfer or authorized use of integrated circuits among enterprises is a way of enterprise resources, and the judiciary has accumulated some experience in dealing with such disputes. From the perspective of openness and practical operation, the layout design of integrated circuits has the conditions to become the object of intellectual property pledge financing.

Specifically, the pledge of layout-design of integrated circuits conforms to the value orientation of the pledge of rights, has the necessary conditions for the establishment of the pledge of rights, and has relevant legislative support. At the same time, the pledge financing of IC layout design is helpful to excavate and make full use of the value of IC layout design and improve the utilization efficiency of intellectual property rights. As collateral, layout-design of integrated circuits is also of great significance to the realization of secured creditor's rights, the creation of social wealth and the promotion of the social value concept of rejuvenating the country through science and technology.

4.4. The Feasibility of New Plant Varieties as the Object of Intellectual Property Pledge Financing

The cultivated or newly discovered wild new varieties have certain cultural and scientific values. Especially, the discovery of agricultural and sideline products involves people's livelihood. The rapid growth of the world population has brought great pressure on food supply. The main reason for the absence of food crisis in modern society lies in the improvement of food varieties and the improvement of productivity. The realization of these goals cannot be

separated from the improvement of plant varieties, or even the discovery and production of new varieties. The Regulations on the Protection of New Varieties of Plants also recognizes and regulates the transfer of related rights of new varieties. Property, openness, transferability and practical operation all indicate that the new plant variety right can become the object of intellectual property pledge financing. [10]

In practice, on January 11, 2021, JiuShengHe Seed Industry Co., Ltd. obtained a pledge loan of 50 million yuan of new plant variety right from changji city Branch of Agricultural Bank of China, which set a precedent for financing loan with pledge of new plant variety right in China.

5. Conclusion

In this paper, the rationality analysis of whether all the objects of intellectual property can become the objects of intellectual property pledge financing is based on the fact that all the objects and related rights are flawless. However, in real life, there will inevitably be various flaws in all the rights, such as ownership, protection period, retrial cases, difficulty in implementation and so on. In view of these problems, the variables brought by the objects of intellectual property should be analyzed on a case-by-case basis, and whether the pledge financing can be carried out with a specific defective right should be comprehensively considered from various angles. In the 21st century, when knowledge is rapidly updated, innovation is the root of inciting social economy. If we want to encourage innovation, make innovation pay off and make innovation sustainable, we can't do without the support of policies for science and technology enterprises, especially small and medium-sized enterprises, and turn knowledge into capital. Especially under the background of the epidemic situation and the decline of the overall economic development, it is very important for small and medium-sized enterprises to obtain financing in time for their R&D and even survival. On the basis of intellectual property object, this paper makes a rational analysis on whether it can become the object of intellectual property pledge financing, aiming at expanding the scope of intellectual property pledge financing object, allowing more small and medium-sized scientific and technological enterprises to enjoy the national dividend, bringing more impetus to knowledge innovation, bringing more vitality to the field of intellectual property pledge financing and promoting social and economic development.

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