

On the Risks of Pledge Financing of New Plant variety Rights and the Resolution of Pledge Risks

Linqi Li, Yujie Wang

School of Law, Henan Normal University, Xinxiang 453007, China

Abstract

To improve the enthusiasm of enterprise financing, the role of new plant variety rights, a new type of intellectual property object, in financing should be vigorously utilized, and at the present stage, the pledge financing of new plant variety rights is facing the problem of pledge risk, which causes great losses to both parties to the transaction. In this regard, to ensure the smooth implementation of the pledge of new plant variety rights, in the case of normal depreciation risk after the pledge, the enterprise can adopt the way of utilizing several intellectual property rights to guarantee the pledge of new plant variety rights; in the face of the risk of abnormal depreciation, it is necessary to strengthen the internal management of the enterprise; in the face of the risk of infringement, the enterprise can enhance the awareness of property rights protection and strive for the legal or administrative, judicial protection and other ways to form an all-around social influence on the society, and to enhance the awareness of property rights protection. When facing the risk of infringement, enterprises can enhance their awareness of property rights protection and strive for legal or administrative and judicial protection to form an all-round protection for the society to prevent the risk of infringement, to enable the financing of new plant variety rights to be carried out smoothly, to promote the development of the financing of new plant variety rights and to free the pledgor from worries as far as possible.

Keywords

New plant variety rights, Pledge financing, Pledge risks.

1. Introduction

As an important way to utilize intellectual property rights, intellectual property pledge financing is the main measure for the implementation of China's intellectual property strategy. However, the development of intellectual property-based pledge financing is relatively late in China, and the intellectual property pledge system has not been perfected. The new plant variety right is also the subject of intellectual property rights, which is not as mature as the traditional subject of intellectual property rights such as patents and trademarks, in addition, the characteristics of new plant varieties, which are mainly seeds and flowers, have a long research and development cycle, and their application is limited in society, and their value has great ups and downs and so on, which cause the risk of devaluation and infringement of rights and other pledge risks, and make the process of obtaining financing. In addition, the characteristics of new plant varieties are mainly seeds and flowers, with long research and development cycle, limited application in society, great fluctuation in value, and a series of factors, which cause the risk of depreciation of new plant varieties and the risk of infringement of rights and other risks of pledges and make them subject to more restrictions in the process of obtaining financing. Therefore, to promote the smooth financing of enterprises with new plant variety rights, it is urgent to solve the problem of pledge risk in financing and improve relevant measures to prevent the pledge risk of pledge financing, to promote the development of enterprises and improve the steady growth of the economy.

2. Concept of Pledge Risk in Pledge Financing of New Plant Variety Rights

The pledge financing of new plant variety rights is a form of intellectual property pledge financing. It uses intellectual property rights owned by enterprises or individuals as collateral to guarantee financial institutions obtain funds. Because the pledge financing of new plant variety rights is a new type of guarantee financing method, compared with the traditional guaranteed method, many pledge procedures are not perfect, pledge procedures are not complete, pledge system is not perfect, and a series of risks. In the face of new pledge financing methods, there are many types of risks.

Risk of abnormal depreciation of pledge, and the risk of infringement. In the process of research and development of new plant varieties, due to the influence of technical factors, the new varieties developed have suffered the depreciation of the market economy. The main performance is that the value of the new plant variety right as the pledge target right is lower than the market evaluation value when the pledge right is realized. The risk of infringement is because new plant varieties, as a kind of intellectual property rights, are affected by the intangibility, timeliness, regionality, and licensing of intellectual property rights. The infringement risk of the new plant variety right mainly refers to the risk that the actor uses or sells the authorized variety in his name and has commercial purposes, which seriously affects the risk brought by the pledge of the new variety right of the obligee.

3. Pledge Risk In Pledge Financing of New Plant Variety Rights

In the tide of the development of the times, the wealth of knowledge is infinite. As an infinite resource, the right of new plant varieties plays a vital role in the development of the economy. Especially in recent years, China's pledge financing based on intellectual property rights has greatly increased, and the new plant variety right has also become the choice of pledge for seed enterprises. However, the new plant variety right is also the object of intellectual property rights. It is not as mature as traditional intellectual property rights objects such as patents and trademarks. In addition, due to the characteristics of new plant varieties, such as seeds and flowers, long R & D cycle, limited social use, and large value fluctuations, the risk of depreciation of new plant varieties and the risk of infringement of rights are caused.

3.1. Risk of normal depreciation of the pledges of new plant varieties

The value depreciation of the pledge of new plant variety rights is mainly divided into two types, one is normal depreciation, and the other is abnormal depreciation. The normal depreciation mainly includes: (1) the legal protection life of new plant variety right is shorter than its own economic value life; (2) Affected by the national agricultural policy, R & D technology, and market demand, the pledge of new plant variety rights will cause a risk of devaluation in value [1]. In detail, China's " Regulations on the Protection of New Varieties of Plants " clearly stipulates that vines, trees, fruit trees, and ornamental trees are 20 years old, and other plants are 15 years old. Although the protection period is longer than the loan period of pledge financing, there will be new technologies to develop new varieties during the pledge financing of new plant variety rights. If the emergence of patented technology, a patent cliff, or a new patented technology, more advanced and more practical versions, will make the existing patented technology depreciate rapidly. Then, for the new plant variety rights that do not have perfect patented technology, once their variety rights encounter new technology research and development, the depreciation probability of the original new plant variety rights will be greatly increased. Although it is protected by the relevant laws of our country, the ever-changing market makes the borrower-banks invisibly exposed to the potential danger of material depreciation. Moreover, even if it is not replaced by new technologies and new varieties, with the factors of intellectual property itself, its value will begin to face the danger

of depreciation before the expiration of protection, and even lose its original economic value. It cannot be ignored that the state's support also plays an important role in the pledge of new plant variety rights. If the prospect of a certain type of seeds or flowers is sluggish and the state's support is declining, it will seriously affect the pledge of new plant variety rights, resulting in the risk of depreciation of new plant varieties.

3.2. Risk of abnormal depreciation of the pledges of new plant varieties

The abnormal depreciation is mostly caused by the subjective reasons of the new plant variety right pledge financing enterprises, such as the registration of the new plant variety right, the invalid problem, and so on, which makes the economic pledge value depreciate. Specifically, the new plant variety right belongs to a right in intellectual property rights. Its registration, registration, and other matters should be applied by the intellectual property application procedure. Only when the application meets the national licensing standards for the confirmation of new plant variety rights, the agricultural department will confirm it and become a new variety right. However, after the application, the right holder must renew the fee to protect the new variety right, while after the pledge of the right holder, before it has not been realized, and when the new plant variety right expires, it is necessary for the new plant variety right holder to renew the fee to continue to obtain legal protection. If the obligee fails to renew the fee in time, it will cause the loss of the new plant variety right, make the pledged right unable to obtain legal protection, cause huge losses to the bank, and then devalue the market value of the new plant variety right, which is caused by the subjective factors and abnormal factors of the new plant variety right holder.

3.3. Risk of infringement of pledges of new plant variety rights

There are boundaries in the exercise of any right, especially in civil rights. In civil rights, infringement represented by intellectual property rights is not uncommon, and new plant variety rights also exist. The infringement of new plant variety right refers to the act of producing, selling, and planting the alleged infringing variety without the permission of the new variety right holder, and the characteristics of the alleged infringing variety are the same as those of the authorized variety of the new plant variety right holder, and cause losses to the right holder [2] According to the International Convention for the Protection of New Varieties of Plants, which China has acceded to, the exceptions to the relevant rights in the text of article 1978 of the (UPOV Convention) include "scientific research exemption" and "farmers' privileges", as well as Article 29 of China's "Seed Law" and Article 10 of the "Regulations on the Protection of New Varieties of Plants" clearly stipulate "scientific research exemption" [3]. In practical work, when cultivating new varieties with existing authorized varieties, new varieties are reused without the permission of the authorized person. For this reason, we believe that this is stipulated in the "scientific research exemption" in Article 29 of China's "Seed Law." Its purpose is to promote the scientific research and development of new variety rights, the cultivation of new varieties, the encouragement of the creation of new varieties of plants, and the promotion of new varieties. Therefore, if it falls within the scope of the above two exemptions, the use of new varieties of plants does not constitute a tort.

In addition to the above exemptions for the use of new plant varieties, there are still many infringement risks in practice due to the uncertainty of new plant varieties themselves. Compared with other intellectual property rights, new plant varieties have their unique features. New plant varieties have strong seasonality, large openness, low replication costs, and are also vulnerable to risks such as damage. In recent years, there have been more and more cases of infringement on the right of new plant varieties, such as the use of protected selfing hybrids without the permission of the authorized person, which violates the rights of the authorized person; in the name of "farmers' privilege," the infringement phenomenon such as planting and utilization is carried out privately; infringements such as selling beyond the

allowable range can cause the authorized person to suffer economic losses and induce infringement risks, so that it can use the new plant variety right to pledge financing to generate invisible infringement risks. The above violations may involve damage to the interests of the new plant variety rights holders, the potential risks to the pledge of authorized varieties, and the reduction of the bank's borrowing confidence. These belong to the category of infringement risk of pledge risk caused by the influence of new plant varieties themselves. To some extent, the risk of infringement increases the difficulty of bank financing for the pledge of new plant varieties, which is not conducive to the development and promotion of intellectual property pledge financing and is not conducive to the development and promotion of new plant varieties.

4. The Resolution of Pledge Risk in Pledge Financing of New Plant Variety Rights

4.1. The collective pledge of multiple intellectual property rights reduces the risk of normal depreciation.

The risk prevention of the depreciation of pledged germplasm of new plant variety rights can adopt a variety of property rights collective guarantee methods with intellectual property rights as the main body. In terms of collective guarantees, Japanese scholar Katayama also believes that corporate guarantees and collective movable property guarantees are known as "general guarantees" and have been widely used in practice. To satisfy people's comprehensive grasp of mobile property, in recent years, packaging mobile property are used as a guarantee such as ABL. Therefore, the risk of devaluation of the pledged pledge of new plant variety rights can be packaged by the collection of other intellectual property rights of enterprises, which provides a guarantee for a pledge of new plant variety rights, reduces bank losses, and enhances bank financing confidence. Professor Liming Wang also noted that collective guarantees are much higher than simple pledges of single value and multiple single property values. After the risk of enterprise pledge occurs, it can be guaranteed by other property of the enterprise. When the pledge is devalued, the guarantee of the collection by the enterprise can make up for the loss caused by the depreciation to the bank. Therefore, when the pledge of new plant variety rights is at the risk of devaluation, the enterprise can use the existing property rights for collective guarantee.

In this regard, when the pledge of new plant variety rights is affected by normal factors and causes the depreciation of the pledge, then the collective guarantee will play a compensatory role. Affected by market, policy, and other factors, the value of new plant varieties has depreciated after the realization of creditor's rights. The financing enterprises of new plant varieties can make up for the bank losses caused by depreciation through the collection of property guarantees. If a company pledged with the new plant variety right, it not only has the property right of the new plant variety in the company but also can use other property rights or property to guarantee the realization of the new plant variety. Because when the guarantee is realized, it is necessary to discount, auction, and sell according to the way the security interest is realized. The depreciation of new varieties of plants has caused economic losses to banks, so the loss can be compensated by the realization of the collective property. When the assets of the whole enterprise are packaged and sold, the value of the guaranteed property will be much larger than the market value of the single property, which is more beneficial to the realization of the security interest and reflects the concept of making the best use of things [4]. While realizing the economic value of the collective guarantee of property rights with intellectual property rights as the main body. The above mainly introduces the measures taken to make up for the losses of banks caused by material risks caused by normal depreciation. Although the advanced guaranteed method of collective guarantee is not yet mature in China, the pledge of collective property rights of enterprises currently in the exploration period also needs to be

treated with caution. However, technology-based enterprises, have more patent inventions, which can resolve the risk of devaluation of pledges through collective guarantees, thus effectively alleviating the problem of financing difficulties.

4.2. According to the internal management of enterprises to regulate the risk of abnormal depreciation.

The value of new plant variety rights is affected by many factors, so there is a risk of devaluation after the pledge of new plant varieties. As mentioned above, depreciation is caused by the market and other normal factors, including some abnormal factors. Different compensation measures should be taken according to different factors to minimize losses and provide banks with the lowest risk of borrowing. Next, the remedial measures for the risk of devaluation of pledges of new plant varieties caused by abnormal reasons.

Firstly, for the new plant variety right pledge financing enterprise to renew the new plant variety, the value of the new plant variety is devalued at the time of pledge, and the loss caused by this abnormal depreciation to the bank needs to be regulated according to the internal management of the enterprise. The problem of the internal department of the enterprise requires the head of the department to bear the loss of the depreciation of the pledge to reduce the loss of the bank. On the contrary, it will only make the financing of science and technology enterprises more difficult.

Secondly, for the problem of responsible shareholders and enterprise management, it is necessary to jointly bear the risk of devaluation of the enterprise's pledge, and there are certain risk factors for the realization of the guarantee itself. Therefore, the risk of devaluation of the pledge caused by the negligent renewal fee of the new plant variety right and other abnormal reasons is borne by the internal managers of the enterprise. Only in this way can the bank increase the probability of borrowing and reduce the bank's concerns. Only in this way can the pledge financing enterprises of new plant variety rights gradually exchange bank loans by pledge, promote the innovation of agricultural varieties, encourage the research and development of new varieties, and then promote the upgrading of China's agriculture.

4.3. Strengthen the protection of new plant variety rights to prevent infringement risks.

4.3.1. Strengthen administrative protection.

First and foremost, the agricultural and forestry authorities should strengthen administrative protection and promote the pledge financing of new plant variety rights to reduce the risk of the pledge. According to the "Regulations on the Protection of New Varieties of Plants", the agricultural and forestry departments of the State Council jointly accepted the application for new plant variety rights and reviewed and granted variety rights. Therefore, whether it is the application, approval, validation, registration, approval, and so on a series of processes, must be approved by the administrative department. Therefore, to further support the pledge financing of new plant variety rights, the administrative department can effectively curb the infringement at the source [5]. Compared with the judiciary, administrative protection has its advantages. Based on the characteristics of uncertainty, intangibility, and easy replication of new plant variety rights, it lays a foundation for the existence of material risks in the pledge process of new plant variety rights. To effectively prevent the infringement of new plant varieties, the administrative department is used to regulate and fight against the infringement, to ensure the safe and stable financing of new plant variety rights. Administrative protection measures have the following advantages. First, it is difficult to obtain evidence for infringement of new varieties. At the same time, compared with judicial personnel, administrative personnel have professional agricultural and forestry knowledge, which makes them helpful in how to protect pledges. The second is to use the initiative and mediation of administrative law

enforcement to alleviate the contradiction of infringement and reduce the risk of infringement and pledge loss. Administrative protection plays a key role in the process of pledging new plant variety rights, creates obstacles to the risk of material infringement in the authorization process, which is conducive to the maintenance of the rights of the licensor, reduces the risk of material and infringement, and has a booster effect on the development of seed industry enterprises.

4.3.2. Strengthening judicial protection.

Justice is the last line of defense to protect fairness and justice. Any behavior that violates the law will be subject to legal sanctions. The infringement of new plant varieties has caused huge losses to the new plant variety rights enterprises, reduced the financing efficiency, and hit the confidence of bank loans, which hurts the future development of the whole seed industry enterprises. According to the " Regulations on the Protection of New Varieties of Plants, " judicial proceedings can be taken to remedy the infringement. Judicial proceedings can be civil litigation, and serious can rise to criminal offenses. When the infringement dispute of a variety of rights occurs, civil litigation can be filed to request the court to confirm the civil relationship and solve the infringement dispute. Taking the new plant variety right as an example, the material risk caused by the new plant variety right itself makes the infringer fake or enforce the rights of the grantor. Lead to the economic value of new plant variety rights. According to the provisions of the law, the remedies for infringement of intellectual property rights mainly include stopping infringement, eliminating influence, and compensating for losses. However, for intellectual property rights, once the infringement is completed, the value will suffer a huge depreciation, and there is almost no surplus value to be used again.

4.3.3. Enterprises raise awareness of protection.

Finally, for the new plant variety right, the enterprise itself should improve the protection awareness of the new variety right. Only by raising the awareness of material infringement from itself can we fundamentally prevent the occurrence of risks.

On the one hand, seed and flower enterprises should establish an information release platform for new plant varieties, to understand the existence of other infringement phenomena, timely pay attention to the release of authorized and approved new varieties of information, facilitate the acquisition of infringement by new plant variety rights enterprises. In addition, the establishment of a new plant variety rights pledge infringement risk department, equipped with commissioners responsible for variety rights application, authorization, licensing, rights protection, and other matters. To increase the research and development of new varieties, we should strengthen the protection, pay attention to the market situation, track the development of pledges, and reduce the risk of infringement during pledges.

On the other hand, it is necessary to enhance the protection awareness of internal personnel, encourage breeding innovation, actively apply for variety rights, encourage intellectual property agency companies and units to participate in variety rights licensing transfer, value assessment, dispute coordination, etc., and create a market environment conducive to promoting the development and growth of pledge financing for new plant variety rights. It can also protect the variety right from infringement by participating in seed and flower associations. Enterprises can increase the market competition and legitimate interests among industries, promote the healthy development of the seed industry, and achieve the purpose of the pledge.

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