

Discussion on the Reform and Development of the International Protection System of Intellectual Property

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Abstract: Due to the influence of historical reasons, economic development level and other factors, intellectual property protection in developing countries lags far behind that in developed countries. Western countries, represented by the United States, frequently launch intellectual property offensives in the world, and frequently threaten developing countries with economic sanctions. The international protection of intellectual property has attracted unprecedented attention from the world. Especially in the international protection of intellectual property rights, there are more difficult to reconcile contradictions and conflicts between the opposing camps of the two major interest subjects of developing and developed countries, and the interest conflicts between the intellectual property rights holders and the public. The above problems need to be properly solved. In international trade, the value of patents and trademarks of products is getting higher and higher. The international development of cultural industry has strengthened the economic value of copyright. At the same time, intellectual property transactions have gradually formed an independent and important market. This paper mainly discusses the reform of intellectual property protection system and the development of its protection system.

1. Introduction

The connotation and extension of intellectual property are deepening. From the perspective of legal history, the emergence of intellectual property can be regarded as a collective concept. The form of its realization belongs to historical contingency on a great level, which can be said to be caused by a series of complex environments under constant changes [1]. Due to historical reasons, economic development level and other factors, intellectual property protection in developing countries lags far behind that in developed countries and is in a inferior position [2]. Under the influence of economic globalization, intellectual property plays a more and more important role. Especially in international trade, the problems of intellectual property contained in intangible intellectual property trade and tangible commodity trade are paid more and more attention. Western countries represented by the United States frequently launch intellectual property offensives in the world, and frequently threaten developing countries with economic sanctions [3]. The international protection of intellectual property has attracted unprecedented attention [4]. We must take a global perspective on knowledge innovation and knowledge dissemination, and give full play to the incentive and restriction mechanisms of intellectual property rights, which should also be widely participated by countries all over the world. Therefore, the international coordination of intellectual property rights has become a necessity in the field of system [5].

In the era of knowledge economy, intellectual property is very important to stimulate knowledge creation and promote the development of social economy, science and technology and culture, and it is an important component of national competitiveness [6]. Especially, in the international protection of intellectual property rights, there are contradictions and conflicts that are difficult to reconcile between the two major stakeholders in developing countries and developed countries, and conflicts of interests between intellectual property rights holders and the public, all of which need to be properly solved. The quality and quantity of the intellectual products produced by a country determine the country's international status[7]. In international trade, the value of patents and trademarks is growing, and the global development of cultural industry has strengthened the economic value of copyright. At the same time, intellectual property transactions have gradually

formed an independent and important market. From the perspective of China's intellectual property strategy, it is of more practical significance to explore the rule of law of intellectual property. Taking the transformation and implementation of domestic laws of international conventions on intellectual property rights as the final foothold, we should take into account the localization and globalization of intellectual property strategy [8]. In essence, the system of intellectual property is to deal with the ownership of intellectual products and balance the interests of different stakeholders.

2. The concept of international protection of intellectual property rights

2.1. The concept of intellectual property

"Intellectual property was originally a monopoly privilege granted by the royal family".[9] After the industrial revolution, the emerging capitalist class urgently needed to promote the economic development through the flood of new technology and to promote the cultural development through the increasing supply of literary works. For this purpose, the capitalist countries were willing to entrust individual authors and inventors with private right, namely copyright and patent right. Trademarks have been protected by tort law for a long time, that is, remedies could only be obtained after trademarks have been infringed, which was a kind of ex post protection approach. With the development of international trade, commodities produced in one country could circulate in other countries around the world. In order to better protect trademarks from imitation or preemptive registration by operators in other countries, the trade giants lobbied the Congress of their countries to grant trademarks property rights protection, which was a kind of ex ante protection approach.[10] This is the historical development of the three main branches of modern intellectual property right, copyright, patent right, and trademark right.

Despite its function of encouraging creation and invention, strong intellectual property right protection has lead to a series of problems, such as restricting public health, stifling the development and updating of technology, etc. In the meanwhile, developed countries try to prove the important value of intellectual property rights to economic development [11]. Intellectual property was not well known in China before the 1970s and 1980s, and there was no direct legislation on intellectual property. After joining WTO, China has changed its attitude from passively accepting the intellectual property rules decided by the western countries to actively constructing intellectual property rules that well adapt to the social and technological development in China. Table 1 shows different revisions of intellectual property laws in China.

Table 1 Overview of China's Intellectual Property Legislation

Single law of intellectual property	First legislation	The first revision	Second revision	Third revision	Fourth revision
Trademark law	1982	1993	2001	2019	
Patent law	1984	1992	2000	2008	2020
Copyright Law	2001	2001	2010	2020	

2.2. International protection of intellectual property

The development of intellectual property system is closely related to the development of commodity economy and scientific and technological progress. It can be said that in the era of knowledge economy, new technologies are developing rapidly, such as the ever-changing network technology and amazing biotechnology. The content of national treatment includes various legal forms of protection of intellectual property rights provided by the domestic laws of member countries for their own nationals. Therefore, according to the principle of automatic protection, the works enjoy the copyright automatically upon completion, without registration, sample storage and marking on the works. The ranking of "key countries" in the "Special 301 clause" of the United

States shows that developing countries are very "favored" by the United States, and the intellectual property legislation of developing countries is disturbed and infringed. As shown in Table 2.

Table 2 US "Special 301 Report" "Key Countries" Ranking List

Ranking	Country	Number of times listed in "key countries"
1	Paraguay	17
2	China	121
3	Ukraine	7
4	Thailand	6
5	India	4
6	Brazil	3
7	Taiwan, China	3

Due to the rapid development of international protection system, China should also establish a unified management organization to coordinate intellectual property rights effectively. A key purpose is to help the holders and custodians of traditional knowledge and traditional cultural expressions have a greater say in the use and dissemination of these important materials representing their cultural characteristics, and to strengthen people's respect and recognition of these materials in law. In addition to the object of intellectual property protection, intellectual property rights themselves are also developing. For example, with the emergence of the network, the right of information network communication has also become an important content of copyright property rights, such as the right to rent, the right to domain name and so on. Through the analysis of its concept, it can be seen that the ways of international protection of intellectual property include the conclusion of bilateral or multilateral conventions or agreements and the establishment of international organizations for intellectual property protection.

3. Challenges to the legal system of developing countries

3.1. Challenges to intellectual property legislation in developing countries

Generally speaking, "sovereignty" refers to the supreme power of a country to handle internal and external affairs independently. Sovereignty has both internal and external duality: its internal attribute refers to the country's internal political ruling power, while its external attribute refers to the country's power to decide its foreign policy and handle international affairs independently. Therefore, if the fire of wisdom spark is not well controlled and allowed to spread, the genius fire catalyzed by the oil of interests may lead to a terrible fire. Therefore, the international protection of intellectual property cannot be separated from international cooperation and coordination, which is another basic principle in the international protection of intellectual property. International treaties and rules formed by international coordination of intellectual property rights should also be based on the principle of balancing interests to reach a balanced state among member states. Intellectual property rights play an important role in society. The management model can be divided into two levels: macro level and micro level. Developed countries hold the vast majority of the world's superior intellectual property rights, while developing countries and the least developed countries often fail to share the benefits of intellectual property rights, which undoubtedly fundamentally harms their interests. Therefore, any sovereign country can determine its intellectual property protection level according to its own national conditions and economic development level.

3.2. Increased enforcement requirements for intellectual property rights in developing countries

From the perspective of TRIPS, TRIPS puts forward higher and detailed requirements in the enforcement of intellectual property rights. Furthermore, under the influence of the globalization of intellectual property rights, the pace of intellectual property rights expansion is gradually accelerating, which is reflected as an irrational expansion. Therefore, the international protection of intellectual property rights must deal with international coordination. The creative work of

intellectual creators should be protected, and the level of international protection of intellectual property rights should be appropriately raised to encourage creativity and invention. For developing countries, a high level of intellectual property protection clearly adversely means the loss of access to cheap goods through imitation and greater spending on social costs. For example, the United States, a strong intellectual property power, regulates intellectual property protection in the relevant bilateral FTA chapters signed with other countries. As shown in Table 3.

Table 3 Contents of Intellectual Property Protection

Serial number	Name	Distribution of intellectual property chapters
1	U.S.-Israel FTA	Article 14
2	U.S.-Australia FTA	Chapter 17
3	United States-Intellectual FTA	Chapter 17
4	U.S.-Singapore FTA	Chapter 16
5	U.S.-Morocco FTA	Chapter 15
6	United States-Panama FTA	Chapter 15
7	U.S.-Oman FTA	Chapter 15
8	U.S.-Bahrain FTA	Chapter 14
9	U.S.-Korea FTA	Chapter 18
10	U.S.-Jordan FTA	Article 14
11	U.S.-Peru FTA	Chapter 16
12	U.S.-Colombia FTA	Chapter 16

The reasons for this expansion mainly come from two aspects. First, with the development of science and technology, legislation should be adjusted to meet the needs of society. Second, because of various pressures from the legislative departments, it can be clearly seen from the protection of their own interests in developed countries. Provisions are made for provisional measures before litigation and measures for preserving evidence before litigation. Standardize the calculation method of compensation for infringement damage, and stipulate that the infringer shall compensate the obligee for the losses caused to the other party by the illegal act, including appropriate attorney fees, etc.

4. Conclusions

For developing countries, the development of international protection of intellectual property rights has many influences: widening the gap between the rich and the poor in North and South countries and stifling the economic development of developing countries. Practically speaking, the system only has the problem that its rationality needs to be improved, which gives people more reasonable expectations for the system. Breaking away from the reality of our country and blindly pursuing internationalization will make China's financial and material resources unbearable, and will also harm the national interests of China. The existing international treaties on intellectual property generally focus on intellectual property protection. Considering the situation that the development level of countries in the world is quite different, the imbalance of interests between developed and developing countries in system design has become the focus of contradiction. Through the discussion of the history of intellectual property rights, we can know that since the intellectual property system came into being, it is a constantly changing and constantly developing system. The progress of the times is bound to make new breakthroughs in intellectual property rights. Meanwhile, we must face the fact that in the level of knowledge innovation and technology development of developing countries still lags behind that of developed countries. One feasible way to promote a more reasonable global intellectual property protection system that takes the interests of developing countries into account is to strengthen the solidarity and cooperation among developing countries while keeping an eye on the new trends in intellectual property protection in developed countries.

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