

## **Research on Judicial Protection and Key Issues of Intellectual Property Rights in Private Enterprises**

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**Keywords:** Judicial Protection, Intellectual Property Rights, Private Enterprise

**Abstract:** The effective protection and management of intellectual property rights is the key to the protection of private technology companies and the stability of the market, and it is also a major challenge. Enterprises should reasonably choose the protection methods of technological achievements according to the form of technological achievements and the management mode and ability of the company's own intellectual property rights. At the same time, enterprises should also pay attention to the effective maintenance of intellectual property rights and the enhancement of corporate litigation capacity to comprehensively improve corporate protection.

### **1. Introduction**

In today's world, high-tech and its industries are developing rapidly, international competition is becoming increasingly fierce, and the decisive position of science and technology in national economic and social development is becoming increasingly prominent. As the main body of technological innovation, private technology enterprises play a pivotal role in the process of science and technology integration and high-tech industrialization. According to the statistics of the Ministry of Science and Technology, as of the end of 2005, there were more than 140,000 private technology enterprises in the country, with an annual total income of more than 6 trillion yuan, accounting for 1/3 of China's total GDP in the year, achieving a net profit of 319.3 billion yuan, and surrendering to national profits and taxes. 2958 billion yuan, exporting foreign exchange earned 174.2 billion yuan. However, due to the imperfect intellectual property protection system of private technology enterprises in China, the lack of patent maintenance effectiveness and the lack of experience in dealing with intellectual property disputes, China's private technology enterprises are still not mature enough in the field of intellectual property. Therefore, private technology enterprises urgently need to improve their intellectual property management strategies and strengthen intellectual property protection.

### **2. Intellectual property structure and effective status of private technology enterprises**

Among the three patents of invention, utility model and design, the invention patent embodies the innovation ability, research and development ability and technical content of the enterprise, and is at the core of these three types of patents. The utility model is only applicable to certain technical fields, and the design does not involve technology. Therefore, the two patent forms cannot directly reflect the technical level of the enterprise. Therefore, many institutions at home and abroad use the number of invention patents as indicators to measure the innovation capabilities of enterprises, regions and countries. According to the statistical data provided by the State Intellectual Property Office, after analysis and analysis, it is known that: Since the end of 2001~2006, although the proportion of invention patent grants in the total patent grants in China has generally increased, the proportion is relatively small (about 25%, in 2006, it was 21.56%) and it has not been greatly improved. The utility model and design patents accounted for 37% and 38% of the total patent grants respectively. In 2006, their proportions were 40.17% and 38.27% respectively. . With the growth and development of the private economy, private enterprises have gradually become the main force of patent application and authorization in China, especially in areas where the private economy is more developed, such as Zhejiang and Fujian. For example, since the implementation of

the Patent Law in 1985 to the end of 2004, 95% of the patent applications in Zhejiang Province have been applied for by private enterprises. From 1985 to September 2005, about 60% of the patent applications in Fujian Province were from private enterprises. However, private enterprises also have a low proportion of invention patents. In countries with developed technologies such as Japan and South Korea, the number of invention patents in Chinese patent applications exceeds 80%. Compared with them, there is still a big gap between China's private enterprises in terms of technological innovation capability and technology intensity. The effective status of patents is another important indicator reflecting the technological innovation and market competitiveness of enterprises and countries. It refers to a state that has been effectively maintained before the patent protection period is over, without losing the legal effect in advance due to the applicant's voluntarily giving up. The maintenance of patent rights requires payment of fees, and only patents that bring economic benefits are necessary to remain effective. The longer a patent is maintained, the longer it can be said to create economic benefits, and the higher the market value. Therefore, the number of valid patents more accurately reflects the actual possession of patent rights by the right holder than the amount of patent grant. China's patent law stipulates that the term of the invention patent right is 20 years, and the term of the utility model patent right and the design patent right is ten years, all calculated from the filing date. According to the statistics of the National Patent Office, among the domestic effective invention patents, 66.3% are valid for less than 7 years, while foreign countries only account for 41.9%; among domestic effective invention patents, only 17.5% are valid for more than 10 years. The proportion abroad is 29.0%. At the same time, among domestic effective patents, invention patents only accounted for 11.4%, while foreign effective patents accounted for 76.5% of inventions. According to the latest WIPO Patent Report 2006 published by WIPO, the number of valid invention patents in China currently accounts for only 1% to 2% of the total number of valid invention patents in the world. The above data shows that China's invention patents are effectively maintained for a short period of time, and there is a clear weakness in the open international market competition.

### **3. Private intellectual property enterprises' intellectual property rights complaints**

Intellectual property rights are the lifeblood and powerful means of competition for private technology enterprises. The importance of intellectual property rights for the survival and development of private technology enterprises is increasingly prominent. From a national perspective, the number of IPR-related lawsuits of private technology companies has increased year by year. On the one hand, the awareness of corporate rights protection has increased, and the number of cases appearing as plaintiffs has increased. On the other hand, some companies have not fully respected the rights of others, and cases of identity as defendants have occurred frequently. At present, the IPR-related litigation cases of private technology enterprises in China mainly have the following characteristics: First, the number of cases continues to grow, and the number of technical disputes is significant. According to the IPR cases announced by various regional courts in the country in 2006, the number of IP cases has increased compared with last year. For example, in 2006, Hangzhou Intermediate People's Court newly received 400 IPR cases and concluded 370 cases, including 212 patent cases and 158 other IPR cases. The number of IP cases and the number of cases closed reached record highs. For another example, according to statistics from the Nanjing Intermediate People's Court, in recent years, in addition to the annual increase in intellectual property cases of private enterprises, the proportion of patent rights, copyrights, technology contracts, and unfair competition disputes has reached 83.94%. Second, the types of cases are diversified, and the complexity of the cases is increased. The types of cases accepted by various courts have been extended from traditional types such as patents and copyrights to intellectual property cases involving new types of new, technologically advanced and complex legal relationships, such as new plant variety rights, invention rights and discovery rights disputes. Third, the subject matter of the case is large and the parties to the dispute are in serious conflict. The huge cases of intellectual property litigation are directly linked to the corporate capital chain; especially for small and medium-sized enterprises, even the survival of enterprises. In 2006, the number of

intellectual property cases in private enterprises in Guangzhou, Nanjing, Shanghai, Hangzhou and other places exceeded 500,000, accounting for more than 20% of the total number of such cases. In some cases, the target amount is as high as tens of millions of yuan.

#### **4. Ways to protect intellectual property rights of strong private technology enterprises**

The correct choice of the protection of technological achievements is crucial for private technology companies. It not only allows enterprises to avoid risks as much as possible, but may bring considerable economic income to enterprises. Enterprises should consider the technical level, the economic value of technology, and the technology life cycle when designing intellectual property protection strategies. For complex, difficult to invent, high-value, and fast-renewing technologies, companies can use technology secrets to protect them, which saves protection costs and achieves full protection. However, for technical achievements that are easily obtained by reverse engineering or are easily obtained by others, and that the cost of their own technology research is large and the life cycle is long, patents, copyrights, layout designs of integrated circuits, new plant variety rights, etc. may be considered. Way protection.

Generally speaking, the effective maintenance time of domestic invention patents in China is short, and there is a clear gap compared with the status of foreign patents in China. China's private technology enterprises should deeply consider the inherent reasons leading to the low effectiveness of patents and strengthen the competitiveness of the patented technologies they own. First, enterprises must improve the application value of the technology content market and make their patents widely used in the market. Secondly, enterprises should pay attention to the market attributes of patents, avoid treating patents as scientific research results, and obtain patent authorization. It is not a means of gaining revenue from the market.

Timely mastery of patent information can help companies avoid duplication of research and improve the starting point of research and development. According to the statistics of the European Patent Office, the annual research savings of EU members using the patent information obtained is as high as 30 billion marks. At the same time, mastering patent information can not only infringe on the intellectual property rights of others, but also protect the technology and products that they export, and prevent others from being copied abroad. Private enterprises should pay close attention to the retrieval, collection, management and utilization of patent documents. However, most private technology companies now have insufficient talent pools in this area, and their ability to search, track, and monitor intellectual property is weak. Therefore, at the current stage, private enterprises should use the patent information services provided by intellectual property intermediaries on the one hand, and strengthen the training and reserve of full-time personnel of the enterprise on the other hand.

Intellectual property rights can be protected by administrative and judicial means. However, since the latter provides comprehensive protection for intellectual achievements in criminal, civil and administrative aspects, it can be said that the judicial system provides more protection and is more powerful. Combating infringers and safeguarding their legitimate rights and interests. At the same time, using judicial protection, it is also possible to comprehensively apply enforcement measures such as pre-litigation interim measures, pre-litigation evidence preservation, and property preservation to ensure relief for losses.

When enterprises start the international market and participate in international competition, they must enhance their awareness of international protection and prepare for the "patent first, trademark first" to maintain their international competitive position and avoid infringement of the rights of others. In the event of a dispute, private enterprises should also be actively prepared and calmly responded, and must not be discouraged by their own size and strength. Facts have proved that as long as calm analysis, calm response, and good use of laws, China's private technology companies may not be in a weak position.

## 5. Conclusion

Although the business has achieved fruitful results in the field of intellectual property, it is clearly not sufficiently prepared for protection. There are problems such as weak awareness of intellectual property protection, insufficient power of peacekeeping, high cost of safeguarding rights, long cycle, and low effectiveness, which require more support and guidance from the government. This topic focuses on the status quo of private enterprise intellectual property protection, analyzes the factors affecting intellectual property protection, and puts forward specific opinions and suggestions on how to strengthen the intellectual property protection of private enterprises and implement the innovation-driven strategy.

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