

Research on Overseas Aid Mechanisms for Intellectual Property Rights

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Abstract

In order to solve the dilemma of information asymmetry in the international market of intellectual property rights, China needs to improve the corresponding overseas intellectual property rights protection assistance mechanism. At the present stage, China's governmental assistance in domestic intellectual property rights protection is relatively comprehensive, but there is a lack of unified legal norms, incomplete assistance measures, and irrational establishment of assistance organizations in overseas intellectual property rights protection assistance. Combined with the practice of the United States and other countries, it is recommended to formulate unified laws and regulations on the protection of intellectual property rights overseas, set up additional measures of insurance premiums for the protection of intellectual property rights overseas, and establish overseas branches of assistance organizations to improve the assistance mechanism and provide help to domestic enterprises.

Keywords

Intellectual Property Rights, Overseas Enforcement, Enforcement Assistance.

1. Introduction

On October 18, 2023, the Third Belt and Road International Cooperation Summit Forum was held in Beijing. Innovation is an important force for development, and building the "Belt and Road" together needs to be driven by innovation[1]. Research experience at home and abroad shows that the implementation of intellectual property strategy and the strengthening of intellectual property protection are the key to improving international competitiveness in the field of science and technology. In recent years, the State Intellectual Property Office (SIPO) has strengthened the work of overseas intellectual property rights protection, and successively issued documents such as "Guiding Opinions on Further Strengthening the Work of Intellectual Property Rights Protection and Assistance" and "Intellectual Property Rights Work Guidelines", which put forward new requirements for the strategic deployment and implementation of the work of intellectual property rights protection and assistance.

The assistance mechanism for intellectual property rights protection varies from country to country, and based on different national conditions, each country has formed its own distinctive assistance mechanism. As for the current assistance mechanism in China, some scholars believe that the government should establish a multi-departmental assistance mechanism for overseas intellectual property rights protection due to the decentralization of the assistance departments[2]. Other scholars believe that China's current assistance mechanism for overseas intellectual property rights protection is still immature, and that a "centralized" assistance mechanism should be constructed, with the State Intellectual Property Office (SIPO) as the dominant force, and the role of social organizations such as industry associations played[3]. Assistance is always an ex post facto measure, therefore, it is necessary to fundamentally improve enterprises' awareness of IPR protection, set up a specialized agency for overseas IPR protection assistance, and give full play to the convenience of overseas business agencies in

protecting IPRs[4]. The above research mainly focuses on how to establish and what kind of intellectual property rights protection assistance mechanism, while this paper firstly starts from the current situation of China's current intellectual property rights protection assistance overseas, and puts forward the lack of the existing mechanism.

2. Current Situation and Main Problems of China's Overseas Intellectual Property Rights Defense Assistance

The provisions of our laws relating to the protection of intellectual property rights in relation to foreign countries include Table 1.

Table 1: The protection of intellectual property rights in relation to foreign countries

Article 12 of the Regulations of the People's Republic of China on Customs Protection of Foreign-related Intellectual Property Rights	If the intellectual property right holder finds that the suspected infringing goods are about to be imported or exported, he can apply to the Customs of the place where the goods are imported or exported for detention of the suspected infringing goods.
Article 31 of the Foreign Trade Act	If another country or region fails to accord national treatment to a legal person, other organization or individual of the People's Republic of China in the protection of intellectual property rights, or fails to provide adequate and effective intellectual property rights protection for goods, technologies or services originating in the People's Republic of China, the competent department of foreign trade under the State Council may take necessary measures against trade with that country or region in accordance with the provisions of this Law and other relevant laws and administrative regulations, and in accordance with international treaties or agreements to which the People's Republic of China is party. or in accordance with international treaties or agreements concluded by the People's Republic of China or to which it has acceded, take such measures as may be necessary in respect of trade with that country or region.

The two laws have made relevant provisions for the protection of intellectual property rights, in which the Customs Protection Regulations require the intellectual property rights owner to apply to the Customs Department, and the Customs Department needs to notify the intellectual property rights owner immediately when it discovers that an infringing product has been imported or exported. Within three working days, the intellectual property rights, the customs department shall detain the suspected infringing goods, and if the intellectual property rights do not apply or provide guarantee, the customs shall not detain the goods. Therefore, it can be seen that the Customs in the protection of intellectual property rights is arbitrary and passive, the need for the relevant intellectual property rights to take the initiative to apply. The Foreign Trade Law stipulates that the state protects intellectual property rights related to foreign trade, and may take measures to restrict the production and sales of infringers. If other countries do not provide our enterprises with effective intellectual property protection, China can take the necessary measures. The Foreign Trade Law protects intellectual property rights at the macro-national level, but does not provide more detailed provisions on specific measures of assistance.

2.1. Ministry of Commerce-led assistance mechanisms

At present, there are two main assistance mechanisms for overseas intellectual property rights defense under the leadership of the Ministry of Commerce and the State Intellectual Property Office. The assistance mechanism led by the Ministry of Commerce is to set up an "Overseas Rights Protection" section in the China Intellectual Property Protection Website. This column summarizes the intellectual property regulations of most countries and organizations on invention patents, utility models and other relevant intellectual property rights, which is convenient for foreign-related enterprises to inquire and understand. It also summarizes the judicial and administrative remedies for intellectual property rights in the U.S., the U.K. and other countries. For example, the "337 investigations" and Special 301 provisions of the U.S. are covered. At the end of the website, there is a telephone consultation service to provide online communication assistance, but the overall utilization rate of this function is not high. On the whole, the "Overseas Rights Protection" section of the China IPR Protection Website systematically introduces the IPR laws and regulations of most countries and organizations and the ways to protect rights, and focuses on macro-level guidance.[5]

2.2. Assistance Mechanisms Led by State Intellectual Property Offices

The assistance mechanism under the leadership of the State Intellectual Property Office (SIPO) is mainly through the setting up of the National Guidance Center for Responding to Overseas Intellectual Property Disputes (NGCCRID). 11 sub-centers were set up in November 2020, and as of now, there are a total of 22 sub-centers, with each sub-center giving more detailed assistance. Each sub-center carries out the following business work: 1. collection and submission of information on foreign-related intellectual property disputes; 2. business guidance on foreign-related intellectual property disputes; 3. training and publicity on foreign-related intellectual property risk prevention and control; 4. coordination of resources for responding to foreign-related intellectual property disputes. 2020 Shanghai Changrun Jieri Superhard Materials Co., Ltd. was subjected to a 337 investigation by the U.S. International Trade Commission (ITC) on poly crystalline diamond composite sheets and its downstream products. In 2020, Shanghai Changrun Jierui Superhard Materials Co. With the assistance of Shanghai International Trade IPR Overseas Rights Protection Service Base, after 2 years, on October 3, 2022, ITC declared that the case was closed for non-infringement and terminated the investigation.

2.3. Problems with existing overseas aid mechanisms

2.3.1. Lack of legal norms for overseas intellectual property rights protection assistance

The foreign trade law and the Regulations on Customs Protection of Intellectual Property Rights of China are mentioned above in relation to foreign protection of intellectual property rights. In July 2019, the State Intellectual Property Office (SIPO), in order to further cope with frequent intellectual property rights (IPR) disputes, established the National Guidance Center for Overseas IPR Dispute Response (NGCC) under its leadership, and subsequently approved the setting up of 22 national sub-centers of guidance for overseas IPR response across the country. Provinces and municipalities have formulated interim measures for the administration of IPR defense assistance with local characteristics on this basis, such as the Measures for the Administration of Overseas IPR Early Warning Programs for Enterprises in Beijing (hereinafter referred to as the Beijing Administrative Measures) and the Measures for Intellectual Property Assistance in Shanghai (for Trial Implementation) (hereinafter referred to as the Shanghai Assistance Measures). The Beijing Administrative Measures require that enterprises applying for funding meet the following conditions: 1. enterprises with independent legal personality in Beijing; 2. enterprises with product export, technology export or export demand, participation

in exhibitions abroad, etc. and other five conditions, which have stringent requirements on the enterprise's export, domestic and foreign ownership of IPR, IPR supporting manpower and financial capacity, etc. 2024 On April 29, 2024, the Beijing Municipal Intellectual Property Office held a conference on the results of the corresponding early warning projects, in which it was indicated that the early warning projects in nine technical fields, such as communication technology for intelligent networked vehicles and microscope imaging, had achieved excellent results, so it is evident that the corresponding IPR early warning measures are of corresponding assistance to enterprises. However, as the above conditions are generally only met by large multinational enterprises, the care for other large and medium-sized enterprises has not yet been reflected. The application conditions required by the Shanghai Assistance Measures are: 1. Enterprises, public institutions and other organizations registered in the city; 2. Due to foreign-related or major intellectual property disputes, there is a need for consultation on reasonable solutions or financial difficulties in carrying out relevant rights protection or response activities. The conditions are relatively loose. It can be seen that there are differences in the conditions, modes and methods of overseas intellectual property rights protection assistance provided by the sub-centers in different regions, which also results in regional fragmentation of overseas intellectual property rights protection assistance, and is not conducive to the implementation of rights protection work at the national level.

2.3.2. Incomplete assistance measures

Overseas assistance measures of Beijing Municipal Intellectual Property Rights Protection and Assistance Center mainly include providing legal advice, risk demonstration, response plan demonstration, expert counseling, information service and other six kinds of assistance measures. This paper believes that the current overseas intellectual property assistance is mainly based on after-the-fact assistance, and can increase the ex ante assistance measures[6]. Take the United States as an example, the U.S. Trade Representative sends a Special Section 301 Report every year, which identifies countries that seriously infringe on U.S. intellectual property protection as "priority countries". According to the 2021 China Patent Survey Report, the proportion of cases involving Chinese enterprises (including Hong Kong, Macao and Taiwan) in the "337 investigations" made by the U.S. International Trade Commission (ITC) in 2021 is more than 50%, so it can be seen that China is a key concern of the U.S. in terms of intellectual property rights. China's enterprises in the focus on high-tech innovation at the same time, but also need to pay attention to the U.S. International Trade Commission's investigation. For the "337 investigation", some people have a misunderstanding of it: that enterprises are subject to patent litigation is not strong, their own intellectual property rights have defects. In fact, this is not the case, the U.S. International Trade Commission launched an investigation does not necessarily mean that the party under investigation there is infringement or other improper behavior. For example, before HTC was sued by Apple, resulting in some of the relevant products in the United States was banned from selling, the market is difficult to continue to expand. The reason for this is precisely the success of HTC in the U.S. market, occupying the throne of the U.S. smartphone market sales champion. Domestic smartphone manufacturers in the U.S. market after the entry of similar encounters, the development of the initial stage is often very smooth, once the momentum, a variety of lawsuits will come one after another, such as Huawei. Therefore, actively responding to the lawsuit is the best way to solve the problem.

2.3.3. Inadequate institutionalization of assistance

At present, China's overseas rights defense mainly adopts the dual-regulation mode of operation led by the Ministry of Commerce and led by the State Intellectual Property Office. The Ministry of Commerce-led rights defense assistance mainly focuses on macro-level assistance, and due to the lack of intellectual property-related material resources, it can provide fewer specific measures. The State Intellectual Property Office (SIPO), on the other hand, can rely on

its own resources to provide more accurate and effective assistance. The State Intellectual Property Office has set up 22 sub-centers (as of now), among which there are four sub-centers in Zhejiang Province, two in Shanghai and two in Jiangsu Province, and one sub-center in each of the remaining provinces, but there are no sub-centers in provinces such as Liaoning Province. Zhejiang, Shanghai and other developed provinces, more high-tech enterprises, the establishment of a relatively large number of sub-centers for the protection of intellectual property rights does have its practical needs, but due to the sub-centers of the protection of the rights of the conditions of assistance must be within the scope of the jurisdiction of the enterprise, such as the Beijing Municipal Intellectual Property Rights overseas protection of intellectual property rights assistance, one of the conditions is the Beijing administrative area registered in accordance with the law has an independent legal person qualification of the enterprises and institutions or the Beijing Municipal Administrative Area The social organizations such as trade associations, industry (industrial) unions, etc. registered in accordance with the law, so it is not difficult to see that the sub-centers are limited to the scope of their respective jurisdictions, which is the high-tech enterprises in provinces without sub-centers have lost an opportunity to defend their rights and provide assistance. Moreover, the assistance organizations are only set up in China, and there are no overseas assistance organizations in major countries.

3. Current Status of Overseas Intellectual Property Rights Protection Assistance in the U.S. and Japan

3.1. United States of America

3.1.1. "Decentralized" aid mechanisms

The United States has not established an overseas IPR assistance agency with specialized functions, and the functions of overseas IPR assistance have been decentralized to various relevant government departments, such as the United States Patent and Trademark Office (USPTO), the United States Copyright Office (U.S. Copyright Office), and the United States International Trade Commission (USITC), among others. Overseas assistance for intellectual property rights in the United States is not carried out by a unified government department, but is dispersed among various departments, and the assistance will be characterized by the combination of their respective areas of jurisdiction. As a result, each department has developed a "go-it-alone" model and has adopted a "decentralized" system.

3.1.2. Trade policy assistance based on 337 investigations

A 337 investigation is a quasi-judicial proceeding in which the U.S. International Trade Commission (ITC) investigates intellectual property infringement and other unfair competition in imported trade pursuant to Section 337 of the U.S. Tariff Act of 1930, and decides whether infringement of intellectual property rights is occurring and whether emergency measures are necessary[7]. 337 investigations are divided into seven phases, including application, filing, discovery, hearing, and administrative law judge's initial determination, There are seven stages: application, discovery proceedings, trial, administrative law judge's initial determination, ITC review or final determination, and presidential review. If the ITC determines that the respondent has imported goods or services into the United States in violation of Section 337, the ITC may issue a limited exclusion order, general exclusion order, or injunction restricting the entry of the infringing products into the U.S. market or stopping the sale of the infringing products in question. 337 Investigations are also "preempted" as compared to federal court actions. Litigation parties can 337 investigation for the reason of requesting a stay of the federal court proceedings, but not the federal court proceedings for the reason of requesting a stay of the 337 investigation. U.S. law on the time requirements of the 337 investigation: "as soon as practicable" to complete. However, in practice, the vast majority of 337 investigations are

completed in 14-17 months (calculated only until the final decision, excluding the period of presidential review). Moreover, in the case of complex and difficult cases with large workloads, the investigation time has been extended. Therefore, the long time and high cost has become a major obstacle for enterprises to protect their rights. The U.S. also often uses 337 investigations to restrict other countries' enterprises from entering the domestic market.

3.2. Japanese

In 2002, the Japanese government introduced the basic national policy of establishing intellectual property as a nation, replacing the original technology-based nation and elevating the importance of intellectual property to the level of national policy, and introduced a series of laws and regulations for the protection of intellectual property and began to introduce intellectual property rights year by year in order to promote the promotion of intellectual property rights, to demonstrate the value of intellectual property rights such as proprietary technological innovations and brand names and trademarks, and to strengthen its competitiveness in overseas markets by combining them in an organic manner. Japan's overseas intellectual property strategy is based on the principle of "one country, two systems" and "one country, two systems". Japan's overseas IP strategy is based on a "centralized" assistance system. On the one hand, the government has taken the initiative to actively cooperate and exchange ideas with governments with which it has trade relations, to formulate relevant IPR treaties, to discuss the mode of protection of IPRs overseas, and to reach a consensus on anti-counterfeiting, anti-infringement and anti-monopoly issues. The JPO is responsible for formulating intellectual property policy and laws, strengthening trademark and patent management, disclosing intellectual property information and other functions. On the other hand, in 2003, the Japan External Trade Organization (JETRO), an independent political and legal entity funded and directed by the Japanese government, was established, which was formerly known as the Japan External Trade Organization (JETRO), which was established in 1958. The Japan External Trade Organization (JETRO) has set up overseas offices to provide assistance to Japanese companies in defending their intellectual property rights overseas, and also serves as an intermediary organization to strengthen ties between Japanese companies and other countries and regions. Japan has set up assistance windows in most countries around the world, which are mainly used to grasp local policies and systems and IPR disputes of Japanese companies, and to proactively carry out assistance work. Japan's assistance focuses on small and medium-sized enterprises, and Japanese small and medium-sized enterprises are also relatively mature in their IP management, with specialized institutions and personnel, relevant legal advisors, and active promotion of invention patent reserves. Under the basic national policy of establishing a nation based on intellectual property rights, the number of overseas patent applications filed by Japanese enterprises has been among the highest in the world for many years. The types of IPR defense assistance services provided to SMEs in Japan are also relatively abundant. For example, it assists SMEs in applying for foreign patents, conducts roving examinations and roving appeal examinations, goes to the localities of enterprises to conduct examinations, and communicates with SMEs on a regular basis. For SMEs that lack capital, patent and examination-related fees are reduced or deferred appropriately.

3.3. A comparative study

In terms of the overseas IPR protection assistance system, the "decentralized" assistance system adopted by the United States enables each department with IPR assistance functions in the United States to make use of its own business characteristics to produce "precision strike" special assistance measures. The advantage of this system is that it can fully utilize the strengths of each government department, and the recipient enterprises can obtain targeted assistance. However, the problem with such a system is that it is difficult to coordinate and organize as a

whole. Each department focuses on matters within its scope of business and on the clients it serves, and the scope of assistance may either overlap or leave gaps[8].

The "centralized" assistance system adopted by Japan, which is a mechanism for centralized assistance led by a government department, has the advantage of promoting international IPR protection through national coercion, and has significant advantages in terms of access to information and coordination of resources. Since enterprises, regardless of their size, are in a weaker position than the state when conducting cross-border transactions, a "centralized" assistance system avoids such an unequal position. At the same time, Japan in the establishment of government departments led by the Japan Patent Office, the Japan External Trade Organization, enterprises, industry and other non-governmental organizations and overseas business institutions also participate in the assistance, so that the government and the market organic combination, to ensure that the macro-assistance policy and micro-assistance measures can be adapted to the market demand, and effectively make up for the shortcomings of the "centralized" assistance system. This effectively makes up for the shortcomings of the "centralized" assistance system. The United States, based on its status as an intellectual property powerhouse, has a significant advantage in intellectual property rights, so it adopts a "decentralized" assistance mechanism, which is refined to make a more targeted approach to assistance, while China's current intellectual property development is rapid, but there is a gap between it and the United States, so Japan's overseas intellectual property rights protection assistance system is more significant as a reference.

4. Suggestions for Improvement of Overseas Intellectual Property Rights Protection Assistance at the Present Stage

4.1. Improvement of legal norms for intellectual property rights protection and assistance mechanisms

By refining the types of recipients of intellectual property rights protection assistance, corresponding methods and procedures for intellectual property rights protection assistance are set up. The Guiding Opinions only generally stipulate the object of intellectual property rights protection assistance, the content of intellectual property rights protection assistance, intellectual property rights protection assistance procedures, and whether it is domestic or overseas assistance, the object of assistance is a large enterprise with a certain degree of influence, or high-tech industries, and small and medium-sized is precisely the object of the urgent need for assistance, the State Intellectual Property Office in 2020, issued the "on the layout of the further strengthening of intellectual property rights protection assistance," clearly proposed that To do a good job of small and medium-sized micro-enterprise rights assistance. Therefore, this paper believes that the conditions of assistance to small and medium-sized enterprises should be appropriately relaxed, and the assistance to small and medium-sized enterprises should pay more attention to the financial and human resources assistance, while the large enterprises are more intellectual property rights early warning and other prior assistance.

4.2. Addition of insurance premiums for overseas defense of intellectual property rights

High litigation costs, long litigation time and other factors have always been the main reasons for many enterprises to give up the right to defend, 2022 China Patent Survey Report shows that the litigation cost is the biggest impediment to enterprises' patent rights defense. Therefore, financial assistance to small and medium-sized enterprises is one of the most reasonable forms of assistance, and the establishment of insurance funds to protect the cost of rights defense. For example, in 2022, Beijing launched the pilot project of legal expense

insurance for Beijing's intellectual property rights overseas disputes. Beijing enterprises with more overseas export business can apply to participate in the legal expense insurance for intellectual property rights overseas disputes, the pilot work is coordinated by the Beijing Municipal Intellectual Property Office, leading the work, the Municipal Bureau of Finance to provide financial support to realize the work during the period of insurance subsidies of up to 800,000 yuan. Although, the subsidy given is not high for enterprises, it is a good reference for the establishment of overseas insurance premiums for intellectual property rights nationwide. In addition, the work of legal expense insurance for overseas disputes of intellectual property rights carried out on a pilot basis in Beijing can be completed by online operation, and the process of insurance and subsidy application by enterprises can be referred to the following chart. As shown in Figure 1.

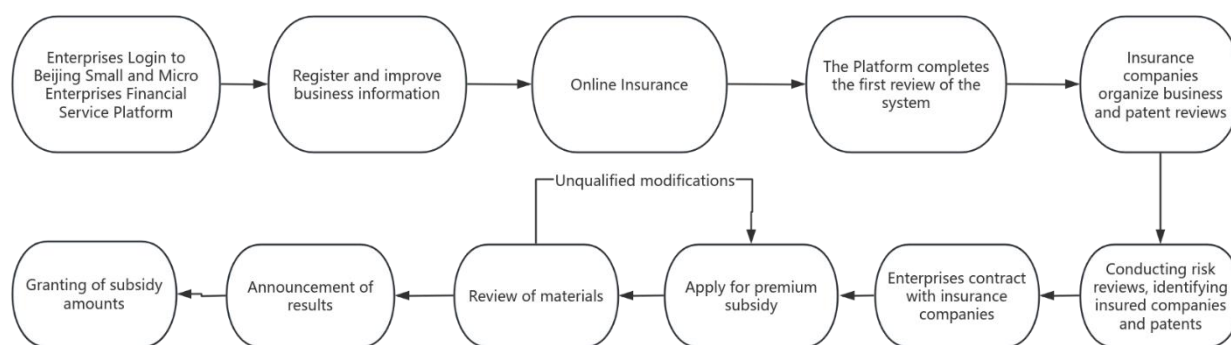


Figure 1: the process of insurance and subsidy application by enterprises

4.3. Establishment of overseas branches of aid agencies

With regard to the establishment of overseas intellectual property rights protection and assistance institutions, a basic framework has basically been formed, with the National Guidance Center for Responding to Overseas Intellectual Property Rights Disputes, led by the State Intellectual Property Office, as the central axis, and local intellectual property rights protection and assistance centers working in coordination with each other, and the establishment of a sub-centre of the national guidance center for responding to overseas intellectual property rights disputes on this basis. However, in actual assistance, intellectual property protection is restricted by territoriality, and local assistance centers focus on providing assistance to parties within their own jurisdictions, making it difficult to respond to cross-regional intellectual property disputes. In addition, China has not yet established a permanent assistance organization for intellectual property rights protection overseas, and domestic organizations are often "out of reach" in providing targeted assistance to intellectual property disputes occurring overseas[9].

This paper suggests that China should set up overseas branches of IPR defense assistance in major trading countries and regions, including countries along the Belt and Road Initiative, as well as the United States, the European Union, Japan, and other countries with close trade exchanges, so as to provide direct assistance to Chinese enterprises investing and trading there, and at the same time serve as a bridge between enterprises and the government. It can also serve as a bridge for communication between enterprises and the government. In addition, the National Guidance Center for Responding to Overseas IPR Disputes, as the core of the assistance system, should rely on the local sub-centers in China and overseas sub-centers that are gradually spreading out to oversee and supervise the work of the sub-centers in the area of IPR protection and assistance, coordinate the cooperation of the sub-centers, and establish contact with the local governmental departments and Chinese enterprises, so as to provide all-around

support for the domestic enterprises through the establishment of the network-like layout of the institutions all over the world.

5. Conclusion

In the context of the "Belt and Road" strategy, China's enterprises are actively developing internationally, but they face many tests in the international market for intellectual property rights, and it is difficult to safeguard the legitimate rights and interests of domestic enterprises. The fundamental reason is the rise of international trade protectionism, Western countries use intellectual property rights system to build trade barriers against China, destroying the market environment of equal competition. In order to solve this dilemma, China can learn from the experience of the United States and Japan, improve more comprehensive legal norms for intellectual property rights protection assistance on the basis of the existing overseas intellectual property rights protection system, and provide more comprehensive assistance through the establishment of overseas intellectual property rights protection insurance measures and corresponding overseas branches.

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