

Legal Risks and Avoidance Measures for Intellectual Property Pledge Financing of Innovative Enterprises

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Abstract: As a new type of rights pledge, intellectual property pledge has many advantages such as flexibility compared with traditional guarantee methods, and is favored by the majority of enterprises in China. Intellectual property pledge financing is a common measure taken by some smes to alleviate financial pressure and solve financing difficulties. Many of the legal issues exposed in the process of its implementation have put both borrowers and lenders under unknown risks, which can easily trigger a new round of crisis. In view of the current situation of intellectual property pledge financing of innovative enterprises in China and common legal risks, the article proposes systematic prevention strategies, including improving the intellectual property circulation mechanism, improving the intellectual property rights assessment system, and establishing a diversified dispute resolution mechanism.

Keywords: Intellectual Property Rights; Pledge; Legal Risk; Circumvention Measures

1. The concept of intellectual property pledge financing for innovative enterprises and its theory

Figure 1 Research background and significance

With the advancement of economic development and globalization process, for the development of innovative enterprises, the number of intellectual property rights owned by enterprises means the innovation ability of enterprises, and innovation is the soul of enterprise progress and development, and intellectual property pledge financing can to a large extent solve the dilemma of enterprise financing difficulties. In the process of intellectual property pledge financing, innovative enterprises are affected by various risks, resulting in a lack of smooth financing process, and risk problems run through all processes of innovative enterprises' intellectual property pledge financing business.

The establishment of risk avoidance measures can help enterprises effectively prevent financing risks, and it is also the basis for financial innovation of financial institutions, and promote the sustainable development of China's intellectual property pledge financing channels. The background of this paper is mainly based on the importance of intellectual property pledge financing, the operability of pledge financing and the feasibility of pledge financing.

Intellectual property pledge financing is the main way for innovative enterprises to finance, and it is also a financing channel strongly supported by the state. The purpose of this project is to analyze the particularity of intellectual property pledge financing in depth, and analyze the assessment, credit, attributes and legal policies of intellectual property pledge financing and their risks, and finally establish a risk prevention mechanism for intellectual property pledge financing, improve the financing environment of intellectual property pledge in China, broaden the financing channels of innovative enterprises, promote the development of intellectual property pledge loan financing in China, and alleviate the financing constraints of innovative enterprises.

Figure 2 The connotation of intellectual property pledge financing

Ip pledge financing is usually pledged by the debtor or a third party to the creditor, and when the debtor is unable to repay the loan on time, the creditor can dispose of the ip right in accordance with the law. Since intellectual property rights are not physical objects, the disposal of intellectual property rights is different from other collaterals, and it is difficult to assess the value of intellectual property rights. Intellectual property pledge financing requires assessing the value of intellectual property rights and then granting loans to financing enterprises according to a certain proportion of financial institutions, which is an innovation in secured financing.

Figure 2 Characteristics of IP pledge financing

The pledged intellectual property rights must be legally owned by the enterprise or individual. In the process of disposing of intellectual property rights, it is necessary to ensure that the intellectual property owner disposes of it, and the non-owner cannot dispose of the intellectual property rights, so when the intellectual property rights pledge financing is pledged, it is necessary to ensure that the pledge enterprise is legally owned.

The collateral is evaluated. Intellectual property pledge financing should first assess the value of intellectual property rights, and the appraiser should determine the value of intellectual property rights on the basis of relevant laws and regulations and the Asset Valuation Standards, and then the financial institution will issue a pledge loan to the enterprise in accordance with a certain proportion.

Intellectual property pledge financing shall be registered with the examination and approval authority as the effective requirement. Intellectual property pledge financing should be registered as a pledge by the registration authority, and the registration authority shall publicize it to the public, which can not only prevent the risk of private transfer of intellectual property rights, but also protect the interests of the pledgee.

Creditors have priority in receiving reimbursement. When the debtor of the intellectual property pledge financing is unable to perform its obligations on time due to poor operation and management, the creditor can dispose of the pledge through auction or sale, and enjoy the priority right to repayment of the proceeded funds.

Figure 3 The concept of ip pledge financing risk

The risk of intellectual property pledge financing is the uncertainty that the losses caused to each participant exists in the course of business. Compared with tangible asset pledge financing, there are also special risks such as value assessment risks and intellectual property rights themselves. The various characteristics of intellectual property rights determine the difficulty of intellectual property valuation, and the evaluation method and the personal reasons of the appraiser will also have an important impact on the value of intellectual property rights; The risks of intellectual property rights themselves are often not accurately assessed and the actual capacity to dispose of them cannot be measured; Nowadays, the actual operation of China's intellectual property related laws and regulations is not clear, and there is no sound guarantee mechanism, which will increase the risk of intellectual property pledge financing.

2. The main legal risks and reasons for the pledge financing of intellectual property rights of innovative enterprises

Figure 1 The ownership of the pledge object is unclear and the risk of unstable effect

The risk of unclear ownership and unstable effect of the pledge object is mainly caused by the intangible nature of the pledge subject matter. The ownership of movable property, such as immovable property of a house or a car, is relatively easy to determine. When pledged with tangible property, the pledgee tends to pay more attention to whether the pledgee has legally legitimate rights to the pledge. For example, whether the pledgee legally owns the pledge, whether the third party is aware of the pledge when the tangible property of the third party is pledged, etc. For the subject matter of intellectual property pledge, that is, the property rights in the transferable intellectual property rights, in some cases, it is difficult to determine the ownership, and the intellectual property rights may not only belong to an individual or a certain unit, but are jointly enjoyed by multiple subjects. For example, according to the provisions of the Copyright Law, a work may be jointly completed by multiple subjects, and the rights of the work do not belong to a person, but to all authors, for example, in the Patent Law, there is a situation where an invention-creation belongs to the common ownership of the jointly completed unit. Therefore, there is a risk that the ownership of the rights pledged by intellectual property rights is unclear in the process of source and there are multiple rights holders.

Figure 2 Risk of uncertainty about the value of the pledged subject matter

Intellectual property pledge is a pledge created by property rights in intellectual property rights. The value of the object of intellectual property pledge determines whether the purpose of the pledge can ultimately be realized and whether the rights and interests of the pledgee can be effectively protected. As a result of human intelligence, intellectual property rights can only reflect their value in the process of application, and the size of the value is often different according to the different types of rights, with individual differences. At the same time, the value of the object of intellectual property pledge is often affected by factors such as intellectual property commodities, the behavior of other competitors, and technological development in the same industry, which has a greater risk of uncertainty.

Figure 3 There is a risk of lack of effective channels when the pledge right is realized

Regardless of the form of security, the purpose is to provide security for the realization of the creditor's claim and to protect the creditor's economic interests from loss. Compared with the realization of general mortgage rights or pledge rights, the realization of intellectual property pledge rights relies more on a market that can accept intellectual property rights for public transactions and a set of rigorous and scientific intellectual property transaction and auction procedures. Although there is already a market in China where intellectual property rights can be publicly traded, and relevant intellectual property rights can also be auctioned through court enforcement procedures in legal procedures, the difference with tangible assets is that the liquidity of intellectual property rights as collateral is poor, and its professionalism is strong, and the value will show a situation of "different from person to person". For the intellectual property enterprise that provides the guarantee, the intellectual property pledge object has a high economic value, but for other entities, even for competitors in the same industry, the compatibility of the pledge target with the enterprise's commodities or business scope determines the value of the pledge target, and when the pledge target is low in line with the development and operation of the enterprise, it will also produce a situation of "valuable and no market" because it cannot actually bring economic benefits to others. For these intellectual property rights, even through the court auction procedure, there is still a big unknown whether the auction proceeds can achieve the purpose of security. At present, the realization of intellectual property pledge rights mainly relies on the conscious performance of the parties and the compulsory enforcement of the court, and there is a lack of other effective ways to realize the pledge right of intellectual property rights, making the realization of the pledge right more convenient and effective.

3. Risk avoidance measures for intellectual property pledge financing of innovative enterprises

Figure 1 Establish mechanisms for publicizing pledge information

Intellectual property pledge registration is the most powerful means of public disclosure of information, which can ensure the security of intellectual property pledge transactions and the interests of both parties. At present, The registration authority for pledge of patent rights in China is the State Intellectual Property Office, the trademark right registration authority is the State Administration for Market Supervision, the trademark right registration authority is the Trademark Office under the State Administration for Market Supervision, and the copyright registration authority is the National Copyright Administration. The registration department of intellectual property pledge is complex, the registration fee, registration process and information publicity of each registration unit are not the same, and the reform of the intellectual property pledge registration system is imminent, and it is necessary to establish a unified registration authority, which will be publicized by the registration authority after the pledge change is completed by making a registration book. In terms of intellectual property pledge registration and review, China implements the method of substantive examination, and because the intellectual property examination project has a strong professionalism, it is necessary for the regulatory unit to improve its professional capabilities. In addition, the actual ownership status of the pledged intellectual property rights should be ensured by questioning the parties and consulting the pledge documents.

Figure 2 Improve the valuation mechanism for intellectual property rights

In the development of intellectual property pledge financing business, the assessment of the value of intellectual property rights plays an important role. The valuation of intellectual property rights needs to cultivate evaluation talents with professional and comprehensive capabilities, and the training process takes a long time and costs high, so in the process of intellectual property pledge financing, a third-party professional evaluation agency should be introduced as much as possible to assess the value of intellectual property rights. Based on the consideration of risk reduction, multiple appraisal institutions should be selected to cross-evaluate the value of intellectual property rights to ensure that the results obtained are objective and accurate. Financial institutions shall establish a special intellectual property value appraisal department within themselves to prevent the risks brought about by malicious collusion between third-party appraisal institutions and lending enterprises. To improve the ip value appraisal mechanism, it is necessary to invite foreign experts to participate in the appraisal of the value of ip rights, restrain the behavior of the practitioners of third-party appraisal institutions, and reduce the risks brought by external appraisal institutions.

The valuation of intellectual property rights directly determines the willingness and amount of loans of financial institutions. On the one hand, ip valuation practitioners need to improve the study of professional knowledge, understand the relevant policies and regulations of the state, actively participate in the asset appraisal training courses organized by the State Intellectual Property Office and other relevant departments, and improve their professional capabilities. On the other hand, it is necessary to choose an appropriate way and method to assess the accurate value of intellectual property rights, including the present value of proceeds method, cost method, market method and other methods, and most of the current selection of the present value of income method to assess the value of intellectual property rights.

Figure 3 Complete legal safeguard mechanisms to ensure that there are laws to follow

The development time of China's intellectual property pledge financing is relatively short, and there is still a certain gap between China and developed countries. In addition, China's laws and regulations on intellectual property pledges are not perfect. Therefore, China should learn from the legislative experience of developed countries in intellectual property pledge and formulate laws on intellectual property pledge financing in light of China's national conditions. At present, the legal system of intellectual property pledge financing is scattered in special laws such as the Property Law and the Guarantee Law, and the government should play a guiding role in supplementing and improving the policies and regulations related to intellectual property rights to ensure the legality of intellectual property pledge financing business. The laws and regulations introduced still need to be continuously revised in light of the actual development situation in order to establish and improve the legal system and provide effective legal protection for China's intellectual property pledge financing business.

4. Quantitative compensation

In order to make innovative enterprises more competitive, it is necessary to solve their financing problems, and the use of intellectual property pledges by these enterprises is a good way to solve existing problems, which is not only a financing method that is more suitable for these enterprises at present, but also helps to increase the financing channels of enterprises, and can also indirectly improve China's financing environment and adapt to the trend of the era of knowledge economy.

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