

The Incentive Mechanism of Intellectual Property

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Abstract:

In the current information age with the rapid development of science and technology, “knowledge is wealth”. Compared with tangible property, the object of knowledge is the intellectual achievement reflected on the material carrier, rather than the material carrier itself. The law gives property rights to this intangible wealth of knowledge, namely intellectual property rights. Because intellectual property is different from real right, the real right holder cannot directly occupy the material carrier like real right, so it is difficult for the right holder to maintain the legitimate rights and interests of personal intellectual property, which may inhibit the enthusiasm of the creators of intellectual products to innovate. On the one hand, the government needs to strengthen the protection of intellectual property rights to stimulate innovation, on the other hand, the protection of intellectual property rights should be kept moderate, not excessive protection, to prevent the emergence of monopoly chaos and unfair competition. At this time, the incentive mechanism of intellectual property has a more important research necessity. Why to adopt the incentive mechanism and how to implement the incentive mechanism are the two main aspects to be explored in this paper. The establishment of a sound intellectual property incentive mechanism needs to do the following aspects: a. The intellectual property system itself is an incentive mechanism, so it is necessary to improve the intellectual property legal system arrangement and right relief measures to further ensure the protection of the intellectual property rights of the right holders, so as to encourage innovation. b. Establish an intellectual property incentive mechanism through criminal legislation to effectively combat intellectual property crimes and effectively protect the intellectual property rights of right holders. c. Anti-monopoly law and anti-unfair competition law are adopted to prevent the excessive abuse of intellectual property rights by right holders, which will harm the public interests of society and cause the subsequent innovation subjects to be unable to carry out further innovation on the basis of the original. In short, the ultimate purpose of preventing excessive abuse of rights is to stimulate innovation. In addition, on the basis of perfecting the intellectual property system, it is necessary to strengthen the establishment of a series of flexible incentives, such as financial incentives; government procurement incentive system; financial incentive system; income incentive system; spiritual incentive system; protection incentive system; tax incentive system; trade incentive system.

Keywords:

Key Words, Intellectual Property, Incentive Mechanism, Incentive Measure

1. Introduction

1.1. The purpose and significance of the research

The author believes that the incentive mechanism of intellectual property rights mainly includes two aspects: First, the state establishes a sound legal system of intellectual property rights by promulgation of the overall plan and outline, laws and administrative regulations on intellectual property rights to further regulate the economic activities of market players and guide people to constantly explore and innovate under the guarantee of full protection of rights, which is also an incentive in itself; Second, the government regulates and intervenes in a series of behaviors of intellectual property rights holders through the use of economic leverage, so as to encourage people to make corresponding market behaviors through flexible incentives and incentives, such as tax incentive policies, financial incentive policies and government funding systems, whose ultimate essential purpose and purpose are to constantly stimulate innovation. Improving the incentive mechanism of intellectual property to promote innovation is of great significance to the protection of national intellectual property rights. Through the incentive mechanism, people's enthusiasm for literary creation, invention and creation can be further aroused. At the same time, the protection of intellectual property rights and the incentive mechanism to encourage innovation can bring huge economic benefits that cannot be ignored for enterprises, improve the economic strength of the country, and enhance the international status and competitiveness of the country in the world. Therefore, the protection and incentive of intellectual property rights are important factors that need to be considered for the prosperity of a country and the realization of the great rejuvenation. Therefore, it is necessary to study the incentive mechanism of intellectual property rights.

1.2. Research status

With the gradual attention of the state to the encouragement of innovation and the protection of intellectual property rights, many scholars have studied the incentive mechanism of intellectual property rights. For example, Professor Liu Zhiqiang believes that the intellectual property system and the government funding system are the main incentive mechanisms to encourage innovation at present, so he makes an in-depth comparative analysis of the government funding system and the intellectual property system. It is worth noting that in addition to the intellectual property system itself, the incentive measures for intellectual property are not only limited to funding from the government, but also include other aspects such as spiritual rewards from society and public opinion. At present, most of these studies start from a certain system or several systems, and there are few studies on the incentive mechanism of intellectual property through systematic and complete analysis, which need to be further expanded, deepened and improved.

1.3. Main content

From the perspective of market mechanism failure and intellectual property allocation, this paper further analyzes the reasons and necessity for the government to correct and intervene in the incentive mechanism of intellectual property, and puts forward three incentive mechanisms: first, formulate the plan and outline for long-term development of intellectual property; The second is to establish a complete legal system of intellectual property, which mainly adopts three measures: a, improve the supply of intellectual property system and right relief measures. b, establish the incentive mechanism of intellectual property through criminal legislation. c, restrict the protection of intellectual property rights to a certain extent through the anti-monopoly law to prevent the abuse of rights; The third is to establish flexible incentive measures for intellectual property, including financial incentive system, government procurement incentive system, financial incentive system, income incentive system, spiritual incentive system, protection incentive system, tax incentive system, and trade incentive system. Finally, this paper provides relevant suggestions and measures to improve the incentive mechanism of intellectual property rights[1].

2. The Theory of Intellectual Property Incentive Mechanism

2.1. The law divides a particular form of knowledge into property in the legal sense

In the legal sense, property usually refers to tangible material property. Such tangible material property usually has three characteristics. First, it has certain scarcity and certain economic value. Secondly, the owner of such tangible material property has exclusivity and exclusivity to its material carrier; Finally, it has some exchange value and can be transferred to others at a reasonable price. Compared with the intangible property of knowledge, its value is not reflected in the material carrier itself, but mainly reflected in the intellectual achievements displayed by the material carrier itself. Often, the subject who creates the intellectual achievements may not have the qualification to directly possess the material carrier. As a result, the rights of the right holder cannot be controlled exclusively, and there may be a large number of copying, plagiarism and other violations of the intangible property of knowledge. This kind of copying behavior is very easy to transform the intangible property of knowledge into public property, which greatly frustrates people's enthusiasm for innovation, invention and creation.[2] Therefore, the law gives certain property rights to the intangible property of knowledge, which is a great encouragement to the information creators. While protecting the rights of the intangible property of knowledge, it can benefit the society and bring social public interests. In short, the promulgation of laws to define the intellectual world as the property in the legal sense is an important measure in the current intellectual property protection work.

2.2. The drawbacks of market regulation need the government to adjust and correct the elements of intellectual property

The law enshares certain property rights to knowledge, an intangible property, which makes knowledge possess property attributes in the legal sense. Intellectual property rights can allocate resources in the market economy through the market mechanism, further exert the function of production factors, improve the operation efficiency of the market economy, and increase social benefits. As one of the essential elements in the operation of market economy, knowledge, an intangible property, plays an indelible role in scientific and technological innovation and the development of market economy. It is worth noting that the market's spontaneous regulation of

economic factors itself has certain limitations, its lag, blindness and spontaneity. In addition, the monopoly problem, the insufficient supply of public goods, the externality problem and the incomplete and unwidespread problem of information have very unfavorable factors for the creation, right protection and right transfer of intellectual property elements. When the market mechanism fails, the resource allocation of intellectual property in the market mechanism will also cause failure. For example, funds, talents and other resources are in the hands of a small number of people, and the creators of knowledge products cannot obtain the conditional support in these aspects. At this time, it is difficult for the creators of knowledge products to initiate and research and develop knowledge products, resulting in a situation that inhibits innovation. The lack of resource channels for intellectual products to form property rights in the legal sense, on the one hand, greatly inhibits the enthusiasm of intellectual products to innovate, on the other hand, intellectual products do not have property rights in the legal sense, and they cannot flow and trade reasonably in the market. [3]At this time, intellectual products cannot become competitive production factors in the market economy, and the market economy is not perfect. Therefore, the spontaneous regulation of the market can not complete the effective allocation and operation of knowledge products in the market economy, and it needs the appropriate intervention and regulation of the state. In addition, while protecting the human rights of knowledge products, the monopoly of knowledge products in the market economy will seriously destroy the market competition order, so the government needs to regulate and adjust it to some extent.

2.3. The implication of incentive mechanism of intellectual property

The incentive mechanism of intellectual property rights mainly includes two aspects: the first aspect refers to the state's promulgation of the overall plan and outline of intellectual property rights, laws and administrative regulations, and the construction of a sound legal system of intellectual property rights to further regulate the economic activities of market players, and guide people to constantly explore and innovate under the guarantee of full protection of rights, which is also a kind of incentive in itself. The specific measures are as follows: to formulate plans and Outlines for the long-term development of intellectual property rights; Perfect intellectual property system supply and right relief measures; Through criminal legislation to set up the intellectual property incentive mechanism; The anti-monopoly law restricts the protection of intellectual property rights to a certain extent to prevent the abuse of rights. The second aspect is that the government regulates and intervenes in a series of behaviors of intellectual property rights holders through the use of economic leverage, so as to encourage people to make corresponding market behaviors through flexible incentives and incentives, such as tax incentive policies, financial incentive policies, government funding systems and other measures.

3. Government Regulation and Regulation - the Incentive Mechanism of Intellectual Property

3.1. To formulate plans and Outlines for the long-term development of intellectual property rights

The planning and outline of long-term development of intellectual property refers to the establishment of a series of basic policies, purposes and objectives related to the development of intellectual property by the state according to the current national

conditions and international situation, and then further stimulate the creators of intellectual products through the protection of intellectual property rights. The ultimate essential purpose of this series of policies, planning and outline is to encourage the creation of intellectual products. Therefore, the formulation of long-term development of intellectual property planning and outline is an essential part of building a sound intellectual property incentive mechanism. At present, our country has implemented the strategy of rejuvenating the country through science and education and the strategy of sustainable development, and has changed from the planned economic system to the current market economic system. The development goal of this market economy requires the strong support of intellectual property as a factor of production. In order to realize the vigorous development of the market economy and improve the operation efficiency of the market economy, we must incorporate the planning and outline of long-term development of intellectual property rights into the focus of intellectual property protection work, and become an important content of the intellectual property incentive mechanism. The report clearly pointed out that we must implement the strategy of rejuvenating the country through science and education, strengthen talent support for modernization, implement the strategy of strengthening the country through talent, and implement the strategy of innovation-driven development, improve the system of scientific and technological innovation, and enhance the capacity for independent innovation. In addition, the State Intellectual Property Office has also promulgated the outline for building a strong intellectual property country, further clarifying the guiding ideology and strategic goals for the past five years, and putting forward strategic priorities in five aspects: first, improve the intellectual property system; The second is to promote the creation and application of intellectual property rights; Third, strengthen protection of intellectual property rights; Fourth, prevent abuse of intellectual property rights; The fifth is to cultivate intellectual property culture, on this basis and put forward a series of specific strategic measures to comprehensively enhance China's scientific and technological innovation, to stimulate the innovation enthusiasm of knowledge product creators for the purpose and goal.[4]

3.2. Establish a complete legal system for intellectual property rights

The establishment of an intellectual property legal system with incentives as the goal needs to follow two basic principles. On the one hand, it is necessary to safeguard the social public interest, ensure the innovation power of stimulating intellectual products, and create social well-being. On the other hand, it is necessary to prevent the abuse of rights, which is to avoid the phenomenon of monopoly and unfair competition, and prevent the later knowledge products from continuing to innovate and create on the basis of the original information. Therefore, the establishment of a complete intellectual property system with incentive as the goal needs to protect rights and avoid excessive abuse of rights. Legislators need to strike a good balance between the two and formulate reasonable and applicable incentive measures. 1, improve the intellectual property system supply and right relief measures In the process of improving the intellectual property system, legislation needs to pay attention to, for the creation of intellectual products in the right, the state should always encourage innovation as the ultimate goal to achieve the following aspects: It is necessary to ensure that the creation of varieties and types of intellectual property rights has certain necessity and feasibility, that is, intellectual products have certain economic value and scarcity characteristics, and the value of the object of intellectual property rights to be protected should be greater than the corresponding cost and

corresponding loss, otherwise the need for protection will be lost. Then, the law should ensure that all intellectual products that really need protection are protected by property rights in the legal sense, and for intellectual achievements that do not belong to the scope, corresponding measures and programs should be taken. Secondly, when there is a conflict of rights, it is necessary to clarify the relationship between the national standard, the social standard and the individual standard. The national standard represents the national interest, the social standard represents the social public interest, and the individual standard represents the individual interest. When the interests of individuals conflict with each other, it is necessary to prioritize which party's interests are more beneficial to the public. When there is a conflict between personal interests and social interests, the following measures should be taken: (1). The ownership of intellectual products is temporarily owned by individuals and ultimately owned by society, which is the overall design arrangement of intellectual property system. In order to safeguard the public interest, knowledge products may be used by the public in certain specific fields, such as textbooks reproduced and issued for the purpose of public teaching. When the intellectual product enters the public domain and is used by social workers, the individual rights of the creator of the intellectual product are still maintained, for example, the personal rights of the creator of the intellectual product. In terms of intellectual property rights relief measures, first, the right relief through administrative means. The relevant law enforcement departments shall, according to the applicant's application or report in accordance with the law, take the initiative to conduct a comprehensive investigation of the infringement of intellectual property rights. When infringement of intellectual property rights does occur, law enforcement authorities shall stop it in accordance with specific procedures and powers. In addition, the administrative department has the power to order the producers of products that infringe intellectual property rights to forcibly destroy the relevant products and raw materials. In addition, customs authorities have the power to ban the import and export of products suspected of infringing intellectual property rights. Secondly, in terms of the identification of the liability of the infringer, there are some disputes whether the principle of fault liability or no-fault liability is adopted. If the principle of fault liability is adopted to identify the liability of the infringer, it is difficult to determine whether the perpetrator is subjectively at fault, so it is difficult to identify the tort liability. If the principle of no-fault liability is adopted to determine the liability of the infringer, it may expand the liability of the doer invisibly. In fact, both of these two principles of liability have certain drawbacks. At present, in order to encourage product creators to continue to innovate, the principle of no-fault liability is the general trend of legislation. If there is no subjective intent or gross negligence in the infringement of intellectual property rights, the people's court shall determine the amount of compensation in accordance with the specific circumstances. In addition, it is also a more important point that the burden of proof should not be borne by the creator of knowledge products. Third, in terms of the liability compensation of the infringer, there are certain disputes whether the principle of filling or the principle of punishment is adopted. The calculation method of the principle of filling is essentially that the amount of compensation is the loss of the right holder, but the value of the intellectual achievements of the intellectual property right holder is difficult to evaluate, and it is difficult to determine the amount of compensation of the infringer at this time. This may allow the infringer to engage in infringement. In fact, it is more reasonable to adopt the punishment principle to determine the compensation liability of the infringer. The amount of punishment is the number of products sold by the infringer of intellectual products

multiplied by the profit lost by each individual product. In this way, the calculation method adopted will be relatively balanced and more reasonable. (2). Anti-monopoly legislation and law enforcement should be adopted to prevent the abuse of rights of intellectual property owners. In terms of restrictions on the rights of intellectual product creators, it is necessary to always pay attention to the excessive abuse of rights by intellectual product right owners, and force trade counterparts to engage in unreasonable trading behaviors through the dominant position of rights in the market economy brought by their intellectual property rights, so as to achieve the purpose of monopoly. Disturb the order of market economy and harm the legitimate rights and interests of consumers. At this time, the government can regulate this kind of behavior by means of intervention, constantly improve the anti-monopoly law, and establish a complete anti-monopoly law relief mechanism. In addition, it is necessary to increase the anti-monopoly law enforcement department's supervision and investigation of this kind of behavior, according to the results of the investigation to make corresponding measures and methods, and bring a lawsuit in accordance with the law. (3). Establishing an incentive mechanism for intellectual property rights through criminal legislation Criminal law is an important legal department in the legal system and plays a vital role in maintaining social order. For the construction of the incentive mechanism of intellectual property rights, the biggest role of criminal law is to effectively combat intellectual property crimes, effectively protect the rights of creators of intellectual products, provide rights protection and safety umbrella for right holders, and further stimulate the creative consciousness of creators to stimulate innovation. At present, our country has carried out a certain number of effective crackdown on intellectual property crimes, but the criminals who carry out intellectual property crimes are still rampant. If we do not strengthen supervision and crackdown, it will greatly reduce the people's satisfaction and trust in the rule of law. Increasing the criminal punishment of intellectual property crimes is an essential part of the current intellectual property incentive mechanism construction. The so-called intellectual property crime refers to the behavior that the perpetrator violates the intellectual property rights of the creator of intellectual products objectively and harms the national intellectual property management system with a deliberate subjective psychological state. (1). The criminal subjects of intellectual property crimes are general subjects, including natural persons and units, especially relevant government departments. (2). The subjective psychological state of the perpetrator is intentional, and the purpose is to obtain illegal profits. Negligence does not constitute an intellectual property crime, and the main subjective aspect of the crime is whether the perpetrator has the intention and the purpose of the perpetrator, without considering the specific inner motive of the perpetrator. (3). The criminal objects infringed by intellectual property crimes belong to complex objects, including the intellectual achievements reflected in the intellectual product created by the intellectual product creator, as well as the national system of intellectual property management. (4) The objective aspect of intellectual property crime is that the perpetrator objectively violates the intellectual property rights of the creator of intellectual products and endangers the national intellectual property management system.[5] All in all, with the development of the information age, the essence of intellectual products is information flow. Since information does not belong to the direct possession of the right holder, intellectual property rights are extremely vulnerable to infringement or even reach the standard of criminal crime. For intellectual property crimes, we only need to establish a sound and complete incentive mechanism for intellectual property rights in criminal law. We will certainly be able

to combat and curb intellectual property crimes to a certain extent, our market economic order will become more and more standardized, and the enthusiasm of innovators will continue to increase!

3.3. Create flexible intellectual property incentives

a. Financial incentive measures In the market resource allocation of intellectual property elements, the generation and creation of intellectual products, the circulation and transaction of intellectual products, the modern application and development of intellectual products, and the protection and management of intellectual property rights of intellectual products may all cause the failure of market resource allocation due to the defects of the market itself. Therefore, it is essential for the government to take certain financial incentive measures. For example, the government directly invests in the creators of intellectual products in the market, provides financial assistance, or gives certain subsidies or rewards to stimulate the talents of intellectual products to vigorously innovate, thus promoting the large-scale development and industrialization of intellectual property rights, and improving the market economic efficiency. b. Government procurement incentive measures In order to encourage innovation, increase intellectual property protection, and promote the development of China's scientific and technological undertakings, the government directly purchases the market of knowledge products and scientific and technological innovation, or purchases the products that can lead and encourage the pioneers of scientific and technological innovation and knowledge products. Or the government could play a direct role as a testing ground for innovation in intellectual products. c. Financial incentive measures To improve the incentive mechanism of intellectual property rights is often insufficient and inadequate only by relying on the regulation and intervention of the government. At this time, it is necessary to rely on the power of some financial institutions and private lending organizations to provide financial channel support for the creators of intellectual products. Including the implementation of loan policy support, adequate information disclosure system and other related measures. d. Income incentive measures At present, China's intellectual property system is not mature and perfect, and the transaction and circulation of intellectual property rights and the relevant benefit distribution system using intellectual property rights as investment are not clear. At this time, the government needs to further clarify the benefit distribution of each market entity and establish the correct profit distribution principle, no matter the production and creators of intellectual products. Or the sellers or intermediaries of knowledge products, should give these subjects the corresponding income distribution. e. Spiritual incentive measures In addition to the material incentives provided by the government and third-party institutions in the market of knowledge products, spiritual incentives should also be given, which may play a smaller role than material incentives. The spiritual incentive measures of intellectual property rights refer to the recognition of intellectual products and higher social evaluation, or the public and the media attach great importance to and pay attention to the market of intellectual products. This kind of spiritual incentive sometimes has a lasting effect. The spiritual incentive measures of intellectual property are embodied in: awarding the intellectual property owner certain honorary title, professional title, position and other related rewards. f. Protection and incentive measures By establishing a sound and perfect intellectual property legal system, including intellectual property legal system, anti-monopoly law, criminal legislation, patent law, trademark law and other related legal systems, the state gives full legal protection to the rights of the creators of intellectual products, restricts the infringers'

infringement, and guarantees the exercise of the rights of intellectual property owners. g. Tax incentive measures Tax means that the national tax department forces taxpayers to fulfill their tax obligations. Tax is actually a burden for all subjects in the market economy. However, when the government gives certain preferential tax policies to market economy subjects, especially the reduction, exemption and suspension of tax revenue for producers, sellers and intermediaries of intellectual products, In fact, it is also an intangible material reward for the knowledge product market and an incentive mechanism. h. Trade incentive measures Trade incentive measures cover two types, one is related to the transaction incentive measures of intellectual property rights themselves, and the other is the incentive measures for the transaction of intellectual products. Trade incentives for intellectual property include not only financial incentives, government incentives and tax incentives, but also the establishment of a sound legal system for intellectual property, the regulation of the market order for intellectual property, and the encouragement of innovation.

4. Suggestions on Improving the Incentive Mechanism of Intellectual Property Rights

The author believes that, first of all, the incentive of intellectual property should be kept moderate, not excessive incentive, and the relationship between the market and the government should be straightening out. On this basis, reasonable and prudent intervention should be carried out, and the organic combination of the hand of the government and the hand of the market should be used to make reasonable adjustment to the production factor of intellectual products. It must be clear that the market plays a decisive role in the allocation of resources, and it must be clear that government intervention plays a supporting role. When the government incentivise the innovation of intellectual products, if it blindly increases intervention or regulation, it may not only cause government failure, but also cause the right holders of intellectual products to abuse intellectual property rights, resulting in monopoly chaos. Therefore, while protecting intellectual property rights and encouraging innovation, it is necessary to restrict the protection of rights to a certain extent. Take relevant measures at the legislative and enforcement levels. Secondly, it is necessary to analyze the specific situation and take effective incentive measures according to the market conditions of knowledge products in different regions, rather than simply adding or abusing all measures. It is necessary to ensure that it is adapted to local conditions and in line with the local economic, cultural and social background. Then, we should always adhere to the protection of intellectual property rights, the establishment of intellectual property incentive mechanism, incentive innovation as the focus of work, make up for market defects, correct market failures, create a government that fully embodies the function of service, and fully work from the perspective of the interests of right holders. It is necessary to combine the means and measures of direct incentive and indirect incentive, and take material incentive as the main means and spiritual incentive as the auxiliary means to solve the problems of unreasonable resource allocation and low economic operation efficiency caused by market failure. Although the role of spiritual incentive is weaker than that of material incentive, it will also play a certain role. It is necessary to combine the means and measures of spiritual stimulation. To sum up, the establishment of the incentive mechanism of intellectual property rights should always adhere to the basic principles and concepts of moderate incentive, concrete analysis, combination of direct incentive and indirect incentive, material incentive and spiritual incentive.

Conflicts of Interest

The author declares that there is no conflict of interest regarding the publication of this article.

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