

# On the Reform of the Judicial Protection System of Intellectual Property in China

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**Abstract:** in Recent Years, China Has Paid More and More Attention to the Judicial Protection of Intellectual Property Rights. Every Year, the State Has Passed Legislation to Actively Improve the Judicial Protection System of Intellectual Property Rights, So as to Ensure the Intellectual Achievements of Individuals and Companies in China, Create a Good Environment for Invention and Creation, Protect the Legitimate Rights and Interests of Innovation Talents in China, and Encourage Them to Serve the Country and Society Make a Greater Contribution. This Paper Analyzes the Problems Existing in the Current Intellectual Property Protection System, and Then Puts Forward Specific Measures to Improve the Intellectual Property Protection System, in Order to Provide Reference for the Improvement of the Level of Intellectual Property Protection in China.

## 1. Introduction

In Recent Years, China Has Been Constantly Revising and Improving the Patent Law. Since the National Intellectual Property Strategy Outline Was Issued and Implemented in June 2008, the Judicial Protection System of Intellectual Property Has Been Initially Established. However, with the Development and Progress of the Society[1], Especially after the International Integration, the Judicial Protection System of Intellectual Property in China is Compared with the Legal System of Some Developed Countries It Needs to Be Further Improved. We Need to Analyze the Protection Mechanism of Intellectual Property in Detail, Find out the Elements That Can Strengthen the Judicial Protection of Intellectual Property, and Apply Them as the Main Objects of the Judicial Reform of Intellectual Property. as Shown in Figure 1



Fig.1 Ranking of China's Innovation Index

## 2. The Current Situation and Problems of the Judicial Protection System of Intellectual Property

Although China's legal reform and improvement speed is very fast, the “two track system” legal system established for the judicial protection of intellectual property rights has played an important role in the protection of intellectual property rights, but with the continuous development of society. The current judicial protection system of asset rights is still unsatisfactory in both the internal operation of judicial protection and the external linkage mechanism[2].

## **2.1 Imperfect Judicial System of Intellectual Property**

Compared with the western developed countries, the legal construction of our country starts relatively late, especially the law for intellectual property protection lags far behind the western countries. Therefore, in the current judicial process of intellectual property, on the one hand, we should learn from the experience of the western developed countries in time to enrich our legal system, on the other hand, we need to learn from the specific judicial process of intellectual property. According to the specific situation of our country, we should adjust measures to local conditions and constantly explore and summarize experience. Of course, at present, the number of courts that can carry out intellectual property judicial trials in China is relatively small. In 2014, only one intellectual property court was set up in each of the three regions. In the later operation process, when the three intellectual property courts try the relevant cases, because the jurisdiction of the court is affected by the administrative region planning, some cases need to appeal after the first instance[3], which will lead to the above-mentioned situation of the jurisdiction of the court is not unified. This kind of bad situation is very disadvantageous to the judicial work of intellectual property infringement, for example, which intellectual property cases involving criminal law can not be tried by the three courts of Beijing, Shanghai and Guangzhou.

## **2.2 Imperfect Judicial Mode of Intellectual Property**

The infringement cases of intellectual property rights need more professional knowledge than ordinary cases in daily life to be tried scientifically. However, in the specific operation, there will be many problems if it is carried out according to the principle of the overall division of labor design of the judicial trial mechanism stipulated by the law of our country. For example, in the process of hearing the case, because of the particularity of the technology related to intellectual property, those judges who have not received professional training can not understand and judge all kinds of information related to intellectual property[4]. This is because intellectual property cases involving invention and creation need judges to have the knowledge and ability in the field of technological invention and creation before they can carry out intellectual property cases involving invention and creation. Therefore, in practice, it is easy to cause criminal and administrative trial errors, and it is difficult to carry out reasonable judicial protection of intellectual property rights in today's society.

## **2.3 Imperfect Intellectual Property Compensation System**

When intellectual property is created, it needs to be transformed into the actual productive forces of the society or into the actual commodities to fully reflect its value. However, in the actual cases of illegal infringement, the occurrence of infringement has completely hindered the effective application of intellectual property market and the path to play its specific value, so the judicial organ cannot accurately define the specific value of asset rights. It brings difficulties to the determination of the amount of intellectual property rights compensation. In addition, the specific evidence collection and proof process of the infringed party are relatively difficult. As a result, in the current specific cases, our compensation for intellectual property rights infringement is mostly compensatory compensation after the infringement[5]. The formation of this phenomenon further infringes on the party with intellectual property rights, and seriously damages the normal development of the market economy. It can be seen that we must establish a scientific evaluation and definition mechanism of intellectual property rights infringement, so as to make the compensation mechanism of intellectual property rights have a scientific basis.

## **3. Suggestions on the Reform of the Judicial Protection System of Intellectual Property**

### **3.1 Reform and Improve the Judicial System of Intellectual Property**

At present, we all know that there is still a lot to be improved in our intellectual property trial system. To be specific, first of all, we should give full play to the leading and exemplary role of the existing intellectual property courts, constantly improve the trial deficiencies of the intellectual property courts in specific practice, and improve their own judicial protection level through

continuous practice and summary; secondly, because there are too few courts in China that can try intellectual property cases, we need to establish more intellectual property laws. The court sent out by the court to make up for the shortage of the number of trial courts of gesture property rights. In addition, the first instance cases and non-technical second instance cases in other places need to be centralized regularly, and then handed over to the intellectual property court for unified trial, so as to improve the working efficiency of the court[6]. Finally, in view of the professional problems of intellectual property cases, we should actively play the value of the existing intellectual property court, and actively explore the judicial protection scheme of property rights. And solve these forward-looking problems. In addition, we should constantly improve the technical strength of the intellectual property court. The judicial organ can not only train the court's own professional technical definition talents, but also cooperate with other technical research institutions, enterprises, universities and professional social groups for a long time, so as to be able to more fair and just trial intellectual property infringement cases.

### **3.2 Reform and Improve the Judicial Mode of Intellectual Property**

At present, the mode of intellectual property judicial trial in China is mainly the “three trials in one” judicial trial mode, which not only reasonably unifies the jurisdiction of civil, administrative and criminal cases of intellectual property, but also harmonizes the evidence rules and trial standards in the process of intellectual property trial, so as to effectively guarantee the specialty of intellectual property trial. In addition, the judicial trial mode of intellectual property “three trials in one” was initially formed by the court of Pudong New Area of Shanghai after years of exploration and research, which effectively promoted the progress of intellectual property trial mechanism. Later, it was gradually popularized all over the country[7], but there were different practice modes in the application process. For example, in some places, civil administrative and criminal cases of intellectual property rights are combined together, and then they are tried by intellectual property courts in a unified way; in some places, judges of civil, administrative and criminal trial courts of intellectual property rights are temporarily formed into a collegial panel for on-site trial. Different modes in different regions have greatly improved the judicial trial mode of intellectual property.

### **3.3 Reform and Improve the System of Intellectual Property Damages**

Due to the imperfection of the laws and regulations on the infringement of intellectual property rights in our country, it is difficult for the injured party to get due compensation after such infringement in the society, which is very unfavorable to the national scientific and technological innovation. There are two kinds of general infringement of intellectual property: ordinary infringement and malicious infringement. In the compensation system, the common tort subject only needs to train the actual loss of the victim, while the malicious tort subject needs to compensate the victim several times of the loss, so as to reduce the occurrence of intellectual property infringement. For example, for those who maliciously infringe upon the trademark rights of others, the general court will impose a fine of several times the amount on the infringer[9]. Only when the infringer understands that maliciously infringes upon the intellectual property rights of others will he pay a heavy price, can the occurrence of such incidents be effectively reduced.

## **4. Conclusion**

In a word, Rome is not built in a day, and the improvement of the judicial protection system of intellectual property is not a day's work. A journey of a thousand miles begins with a single step. We need to analyze the problems existing in the judicial protection process of intellectual property, and take the most scientific and reasonable measures based on the specific situation of the current society, such as further encouraging Chinese enterprises and individuals to actively carry out intellectual protection through judicial protection. We will create more resources and provide more scientific and technological support for the country's development and social progress. At the same time, the state needs to constantly improve the judicial trial mode and damage compensation system

for intellectual property, so as to better improve the judicial protection system of intellectual property in China.

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