



Protection of IPR and Preventing the Abuse of IPR

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.Relationship of

IPR Protection and Preventing the Abuse of IPR and the Significance of Preventing the Abuse of IPR

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IPR Protection refers to the proper exertion of IPR, while preventing the abuse of IPR refers to the improper exertion of IPR.
- Protecting the proper exertion of IPR and Preventing the abuse of IPR are two sides of one coin, and serve the objective of IPR system together.



.Relationship of

IPR Protection and Preventing the Abuse of IPR and the Significance of Preventing the Abuse of IPR



If a country have both the system of IPR protection and the system of preventing the abuse of IPR, it indicates that this country have a comprehensive legislation, which neither affecting the level of IPR protection, nor weakening or lowering the level of IPR protection.



In fact, it is the developed countries with the highest level of IPR protection that have the most mature system of preventing the abuse of IPR, such as the United States, EU and Japan.



.Relationship of

IPR Protection and Preventing the Abuse of IPR and the Significance of Preventing the Abuse of IPR



In the era when knowledge has become the most important market factor, the capacity of IPR right holders in acquiring the market force by taking their technical and cultural advantages are strengthened increasingly.



In the meantime, the technical and cultural products are closely related to the public interests.



The issue that how to guarantee the market force of right holders is not abused and how to realize the balance of legal right of right holders and public interests, is directly connected with the appraisal and acceptance of IPR by ordinary people.



.Relationship of

IPR Protection and Preventing the Abuse of IPR and the Significance of Preventing the Abuse of IPR



Therefore, when strengthening IPR protection, establishing a comprehensive system of preventing the abuse of IPR is really important.



.Legal Practices on Preventing the Abuse of IPR in International Organizations and foreign countries

- TRIPS 8 2 “
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In paragraph 2, Article 8 of TRIPS of WTO, it provides that, “Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology”.



.Legal Practices on Preventing the Abuse of IPR in International Organizations and foreign countries

- "TRIPS 40 2 “

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In paragraph 2, Article 40 of TRIPS of WTO, it provides that, “Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.”



.Legal Practices on Preventing the Abuse of IPR in International Organizations and foreign countries



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The theory basis on preventing the abuse of IPR: the theory of preventing the abuse of rights in continental law system, the “unclean hand” theory and public policy theory in common law system.



All of these theories emphasized that the exertion of rights should be in good faith, coincident with the objective of justice and should not go beyond the proper limit.



.Legal Practices on Preventing the Abuse of IPR in International Organizations and foreign countries



The criteria in judging the abuse of IPR:
obstructing the innovation, transfer and spread of
technology, impeding the progress and the
increase of the wealth of the whole society,
disturbing the balance between IPR right holders'
interests and the public interests, etc.



.Legal Practices on Preventing the Abuse of IPR in International Organizations and foreign countries



Types of action of abusing IPR: abusing market dominance, restricting competition by IPR right holders, abusing IPR in the combination of enterprises, not implementing or not fully implementing IPR without appropriate reason, abusing means of relief, etc.



.Legal Practices on Preventing the Abuse of IPR in International Organizations and foreign countries



Legal effects of abusing IPR: damages and compensation, eliminating monopoly, stopping abuse action, modifying contacts, compulsory certification, annulling the invalidation of the contact, withdrawing or alternating IPR, not granting the relief, file, etc.



.Legal Practices on Preventing the Abuse of IPR in International Organizations and foreign countries



Generally, with high legislation level, good capability in coordinating interests and more mature IPR system, developed countries have comprehensive rules of IPR protection and preventing abuse of IPR.

Currently, the United states, Japan and EU have the most comprehensive system of preventing IPR abuse.



.Legal Practices on Preventing the Abuse of IPR in International Organizations and foreign countries



Compared with developed countries, developing countries lack of comprehensive system of abusing IPR, while laying particular stress on IPR protection because of a late start in establishing IPR system and great international pressure on strengthening IPR protection.



. Current Situation of Preventing the Abuse of IPR in China



Some laws and regulations on preventing the abuse of IPR in China: General Principles of Civil Law, Counter-Unfair Competition Law, Foreign Trade Law, Contract Law, Copyright Law, Patent Law, etc.



.Legal Practices on Preventing the Abuse of IPR in International Organizations and foreign countries



Generally, without comprehensive legislation, without implementing current rules effectively, without enough study in theory field, and without enough practical experience in judicial field.



In the meantime, the issue that Chinese enterprises are damaged for the abuse of IPR by foreign right holders becomes more and more serious.



It still have a lot of room for improvement in preventing the abuse of IPR.



. Conclusions



All systems, including the system of preventing the abuse of IPR, have their own specific objectives and should be designed to consider and realize the balance among interests of relevant parties.



. Conclusions

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”(TRIPS 7)

“The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.” (Article 7 of TRIPS)



. Conclusions



Preventing the abuse of IPR needs joint efforts from international community.



Thank You!