

Analysis of Factors and Countermeasures on Intellectual Property Friction in China's Foreign Trade

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Abstract

In recent years, trade friction related with intellectual property rights in China's foreign trade get increasingly prominent, which is a huge challenge for China. In this article, we will firstly analyze the status of intellectual property friction of China's foreign trade, secondly analyze the China's factors of Chinese foreign trade friction relating to intellectual property rights, and finally put forward strategies on how to tackle intellectual property rights friction from the perspectives of government and enterprises respectively.

Key words: Foreign trade, Intellectual property friction, Intellectual property protection

In the intense international market competition, the intellectual property rights become the important tool which is used by every country to implement the trade protection day by day and which is the core competitiveness of enterprise development. Strengthening the intellectual property rights protection is also the major pillar for domestic enterprises to participate in the international competition. Nowadays, on the one hand, China has already been a big trading country, but not a trade powerful nation. the Chinese science and technology as well as scientific innovation ability also have a very big disparity from that of developed countries. On the other hand, China's intellectual property system started late, intellectual property protection consciousness is also quite light. Therefore, in recent years, the intellectual property rights friction in the Chinese foreign trade further intensified.

1. Present situation of intellectual property rights friction between China and foreign countries

1.1 Foreign Right infringement case concerning intellectual property rights grows rapidly

In the recent years, foreign rights infringement cases relating to intellectual property in the Chinese foreign trade grow rapidly. Taking US's 337 investigations as the example, the US initiated the first 337 investigation to China in 1986. From 1986 to 2008, the US altogether initiated 89 investigations including 73 occurred after 2002. Thus it can be seen, China foreign intellectual property rights dispute is increasing unceasingly, and is more complex.

1.2 Domain of the intellectual property rights friction expands unceasingly

Since China joined WTO, the Chinese Enterprise encountered the international intellectual property rights dispute frequently, ranging from DVD, the color television, the motorcycle, to the digital camera, the MP3 chip, the automobile to the telecommunication equipment. There are thousands of Chinese enterprises concerned in the foreign intellectual property rights disputes. Some enterprises have paid the serious for this reason. Moreover, these enterprises which are under the intellectual property rights impact are nearly the Chinese Best potentially emergent industry. Once these Chinese enterprises suffered the attack, the whole industry in addition to these enterprises would suffer the losses.

1.3 The intellectual property rights dispute mainly comes from the the lawsuit which proposed to the Chinese enterprises by foreign parts

In the foreign concerned intellectual property rights case, the defendants are basically the Chinese Enterprises. The Plaintiffs are mostly overseas big company in the same profession. These appealed enterprises have the international

famous trademarks and the technologies, the abundant fund and the big influence. However, most of the sued Chinese enterprises are small import-export trade companies, middle and small scale production enterprises and private enterprises, which have small scale of production and narrow management scope. They often encounter the prosecution because they have few proprietary intellectual property rights and imitate others completely.

1.4 The number of the intellectual property rights difficult case increases

In recent years, in the intellectual property rights case, which are accepted by the People's court of China, presented themselves as some strong-specialization and complex technical cases. These new form intellectual property rights cases' appearance increased the difficulties of the intellectual property rights case placed on trial.

2. The Chinese factors in which result the intellectual property rights friction in China

2.1 The Chinese enterprises' legal awareness of intellectual property protection is light

As a result of many kinds of factors' influences, the intellectual property protection consciousness of majority of enterprises and institutions in China is also in the low level. Quite part of enterprise staff and leaders do not understand the economic value and the competition value of intangible assets. The weak legal awareness of intellectual property protection of Chinese enterprises mainly manifests in the following three aspects: First, consciousness of protecting the intellectual property rights is weak. Some Chinese enterprises are quite fuzzy to the intellectual property rights concept and know few knowledge related with the intellectual property rights, which results in many China brand names robbed overseas, or is bought inexpensive. Second, intellectual property rights registration consciousness is deficient. At present, regarding intellectual property rights in industrial property, almost all countries of the world implement the registration protection principle. No having the registration, no the legal protection.(Wu, 2005) Third, as a result of all kinds of reasons, most of Chinese enterprises do not understand the international conventions related to the intellectual property rights.

2.2 Chinese export quantity grows rapidly and the market is centralized

In the course of 30 years' reform and open policy, China gradually becomes the global manufacturing center, China's foreign trade presents the characteristics of export quantity to grow rapidly and the export market centralized.

First, the Chinese export quantity growth is rapid. China's export amount is 249.2 billion US dollars in 2000, but grows to 1428.5 billion US dollars in 2008 and grows 5.7 times in 8 years. As a result of financial crisis's influence, China's export amount drops in 2009, but actually surpasses Germany to occupy first in the world. The swift growth of China exports has had certain influence to other country market. Other countries started to use the intellectual property rights to limit China's trade and maintained their own benefits.

Next, China's export market is centralized relatively. After reform and open policy, the Chinese foreign trade has obtained the huge development, but the foreign trade market actually presents the centralism tendency. Because after reform and open policy, the degree of fit of China's export structure and comparative advantage of labor force is enhanced. The labor-intensive product proportion in the export structure enhances rapidly, but developed countries are precisely the main consumer market of labor-intensive products, because their labor force cost is soaring.(Pei,2009)At present China's export market still mainly concentrate in the US, European Union, the Chinese Hong Kong and Japan, which caused the increasingly Chinese and foreign trade friction.

2.3 The professionals on intellectual property rights' protection are insufficient

Because China's intellectual property system was established late and lacked the universal ideological foundation and the social identity, personnel training in the fields of the intellectual property rights, also started correspondingly late, which causes the shortage of the related talented persons. These problems have already become the bottleneck of restricting China's intellectual property rights enterprise and the economic development. It is reported that Guangdong Province of China which has the most registered intellectual property rights has a gap of top level talented persons in intellectual property rights, about 7000-10000 people every year, with a demand increase above 1000 people every year.

2.4 The proprietary intellectual property rights are weak in the Chinese foreign trade

First, there is a big disparity in patent constitution proportion between China and the developed countries. It mainly displays accounts for the proportion is not high in the patent of invention and the quality is bad. Enterprises' technological innovation ability is insufficient and enterprises lack the proprietary intellectual property rights, so they are in the passive position in the competition (Lu, 2009).

Second, the Chinese Enterprises lack the core technologies. Mostly half of the Chinese imports and exports are the processing trades. Moreover, in China high-tech product's import and export, the processing trade reaches as high as

80%. However in the processing trade, China only undertakes the processing work mostly, and cannot master the core technologies, which causes the Chinese exports face with more intellectual property rights barrier. The more exports are, the more intellectual property rights frictions are.

Third, the income deficits of Chinese patent permission increase year by year, the revenue and expenditure of international patent permission is not very balanced, which cause not only aggravated the Chinese Enterprises' export cost burden, but also substitute or squeeze out the investments of China's research and development, and will create the dependence upon the foreign patent permission.

3. The countermeasures of overseas intellectual property rights friction in China

3.1 Consummate China intellectual property rights legislation, and popularize intellectual property rights law

First, China should consummate the intellectual property rights legislation as soon as possible according to WTO regular, international conventions' request and unify China's actual national condition. China must pay great attention to surveillance and the standard function of the law to the intellectual property rights commuters. Simultaneously, China must make the intellectual property rights the utilization and the implementation play a better role through system's arrangement, and promote the entire social the benefit. Next, China should raise a high quality troop of law enforcement for the intellectual property rights and raise the enforcement level of intellectual property rights law (Harry, 2010). Finally, China must carry out the multiform intellectual property rights law popularization activity around the country, and strengthen the national intellectual property protection consciousness and the concept of law.

3.2 Establish the effective industrial patent information service network and the right infringement warning in advance mechanism

All levels of the government may establish the industrial patent information network through good information channel of oneself, gather and announce overseas legal rules information related with the intellectual property rights, promptly make the notification to the warnings and disputes of intellectual property rights in the import and export process of various countries, in order to carry on the reminder to Chinese main export products possibly being involved into the intellectual property rights infringement question, and cause the department concerned and enterprises' attention, and provide for the department and enterprises some experiences and references to deal with the intellectual property rights disputes.

3.3 Fully understand international competition environment and dodge the intellectual property rights friction reasonably

Before entering into a new international market, the enterprise must carry on the market investigation and study so that it can have a full understanding to the international competition environment. On one hand, the Chinese Enterprises must understand the intellectual property protection system of import countries, and positively organize their own intellectual property protection organization. (Benjamin.2010) On the other hand, the enterprise must clarify the situation of competitor's intellectual property rights and their application patent protection situation in the goal markets of Chinese enterprises, then to judge Chinese products whether to have the intellectual property rights infringement in the goal markets. If having the possibility of the right infringement, the enterprises must consider using suitable way to enter the market. For example, they can make the improvement to the product to bypass patent scope of the competitor, or carry on consultations with the competitor to decide cooperative production.

3.4 Speed up the international intellectual property rights personnel training

The talented persons who engaged in the intellectual property rights service not only need master the reliable legal knowledge, but also must have specialized accomplishment of technology aspect. Simultaneously, in order to deal with the international intellectual property rights questions well, they should have a good command of the foreign language and the international law skilled. In China, the talented persons of intellectual property rights who have these aspects quality are obviously insufficient. Therefore the government should raise the quantities of professional personnel who are familiar to TRIPS of WTO, familiar to foreign language, and have the full understanding to characteristics of technology trade barriers through all kinds of ways.

3.5 Sharpen the enterprises' independent research and development ability and create the more proprietary intellectual property rights

The practice proved that an enterprise which has the formidable independent innovation ability can take the initiative in the intense international market competition. Therefore, only sharpening the enterprise independent innovation ability comprehensively, enhancing independent research and development ability, having the more effective proprietary intellectual property rights, an enterprise could maintain and enhance the international competitiveness. This kind of

enterprises should obtain the above abilities from the following several aspects: on one hand, they must set up the enterprise innovation idea, form the important energetic power of independent research and development of the enterprise, strengthen the enterprise own innovative ideology unceasingly, establish the technological innovation system of the enterprise which take the enterprise as the main body, the market for the guidance and the long-term competitive advantage. On the other hand, they must increase the investment of enterprise research and development and establish the personnel training funds. Specifically speaking, the enterprise should establish and consummate the enterprise interior innovation funds and the intellectual property rights personnel training funds. When some people establish the proprietary intellectual property rights or make the great contribution in the international intellectual property rights conflict negotiations, the enterprise should use these funds to give them rewards or provide them the opportunities to be educated again.

4. Conclusion

In the macroscopic aspects, the Chinese government should conform to the Chinese national condition to formulate intellectual property rights strategy and establish the early warning and emergency mechanism of the intellectual property rights. Simultaneously, it should strengthen the legislation of the intellectual property rights and enhance the law enforcement level so as to build the good legal environment of China's realizing intellectual property rights strategy. In the microscopic aspects, the enterprise should sharpen the technical research and development ability and independent innovation ability unceasingly, do not encroach upon other enterprises' intellectual property rights and protect own intellectual property rights from aggression, and enhance ability of dealing with the intellectual property rights disputes.

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