

Research on the Application of Basic Principles of Civil Law in Intellectual Property Law

Fu Limei

Northeast Electric Power University, Jilin 132012, Jilin, China

email: 187072211@qq.com

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Abstract: With the continuous development of the society, people's living standard and education level are continuously improving, and the public awareness of intellectual property protection is increasingly awakening. Intellectual property rights generally refer to some organizations or individuals who have exclusive rights to their intellectual labor achievements. This right can bring related benefits to the creditor. In order to avoid plagiarism and theft, legislative protection is needed. The basic principles established in the "General Principles of Civil Law" are the basic principles of our private law and the highest principles of private law that our intellectual property law must follow. The basic principles of civil law have also become the highest code of conduct for citizens in all private law activities. China's intellectual property law should also apply the basic principles of civil law. This article will discuss the application of basic principles of civil law in intellectual property law.

1. Introduction

Intellectual property refers to individuals and teams who enjoy exclusive privileges on intellectual labor achievements according to law, such as literary works and trademark design, which all belong to the category of intellectual property [1]. In civil law countries, the basic principles of private law are often determined by the civil code, so the basic principles of private law are also called the basic principles of civil law. After the acquisition of intellectual property rights, the final confirmation and protection of intellectual property rights are mainly through civil proceedings, which is the case in most foreign countries. Especially in the current era of knowledge economy, knowledge and technology innovation has become the key to promote economic progress. It has also been used as a means to monopolize the market and improve competitiveness, and has been paid attention to by various countries, gradually rising to the height of national strategy [2]. Protecting major intellectual property achievements such as copyright, trademark rights, patent rights and industrial product design can not only stimulate the public's individual awareness of innovation, but also conform to the trend of respecting knowledge and advocating innovation in the whole society. In our country, intellectual property law belongs to civil law, so the basic principles of civil law are also applicable to our intellectual property law.

2. Basic Principles of Civil Law and Intellectual Property Law

The basic principle of civil law refers to the basic principle that effectiveness can run through the whole process of civil law and can embody the basic value of civil law. In civil law, the principle of equality refers to the equality in legal status and the equality of different parties in civil law activities. Moreover, the principle of equality is also the most basic principle in civil law principles. Therefore, in intellectual property rights, it should be effectively reflected and run through [3]. Civil legislation, justice and all civil acts must follow certain basic principles, namely, the basic principles of civil law, including equality, voluntariness, fairness, law-abiding, honesty and credit, public order and good customs, and prohibition of abuse of rights. From the perspective of legislation, the protection of intellectual property rights is quite different from the general protection

principles in the property law. The protection of intellectual property rights in accordance with the basic principles of civil law plays an important role in opposing intellectual hegemony. Therefore, the basic principles of civil affairs, which strongly reflect the fundamental nature of civil life, must be firmly observed [4].

In our country, the intellectual property law consists of patent law, copyright law and other administrative laws and other rules and regulations, which is an important guarantee for the protection of intellectual property rights. The principles of civil law such as honesty and credit, protection of private rights, protection of trust interests and maintenance of public order and good customs have gone through more than ten centuries of perfection and development. It is very necessary to guide the protection and maintenance of intellectual property rights with these theories. In our country, copyright law, trademark law and patent law all belong to the category of intellectual property law. From the perspective of the subject of intellectual property rights, equality is also reflected between the infringer and the relative person of intellectual property rights, and they have the same legal status. At the same time, there is some equality in the protection of prior rights. Intellectual property infringement belongs to civil infringement. Although the form of expression and infringement are different from general civil rights, the basic legal nature is the same [5]. Therefore, the basic principles of civil law are also applicable in intellectual property law.

3. Voluntary Principle and its Application

The principle of voluntariness refers to the principle that civil activities should follow voluntariness. It is the recognition of equal legal status in the hearts of all parties at that time. Therefore, it can also be said that the principle of equality is the basis for the application of the principle of voluntariness. It is necessary to know that the rational use of the principle of voluntariness in intellectual property law usually takes two forms: first, from the perspective of acquiring intellectual property, no matter who, they all enjoy the basic principle of acquiring and enjoying intellectual property. From the perspective of the acquisition of intellectual property rights, the acquisition and enjoyment of intellectual property rights have implemented the principle of voluntariness, such as trademark registration (mainly based on the principle of voluntariness), patent application and publication of works. The use of intellectual property rights means that the creditor can choose who will transfer the intellectual property rights or how to make capital contribution and financing according to his own wishes without violating the law, and outsiders are not allowed to interfere. It is an extension of the principle of equality, that is, the parties have the right to choose whether and how to participate in civil activities, and outsiders are not allowed to interfere with the wishes of the parties. At the same time, the parties concerned should also bear the corresponding consequences. The formulation and implementation of intellectual property laws are similar to the legislative mode, structural thinking and legal logic of civil law. It can be said that this is a clear demonstration of the application of relevant civil law theories in intellectual property legislation [6].

4. The Principle of Good Faith and its Application

The principle of good faith means that the parties concerned should be honest and good faith when engaging in civil activities and should not infringe upon the interests of others and society when exercising their rights. The balance of interests is reflected in an expression of the intellectual property system, which is to fully respect the intellectual property rights of the owner of intellectual achievements, endow the creditor with rich and colorful rights and provide strong legal protection. In the aspect of intellectual property rights, if a writer and a publisher reach an agreement and sign a contract on the distribution of benefits, but then the publisher fails to perform his due obligations according to the contract, or has reservations when signing the contract and fails to explain the real situation, such behavior violates the principle of good faith. At the same time, the application of anti-piracy technology also limits the normal application of some technologies by the public. Therefore, the basic principle of honesty and credit should also be observed in specific applications.

According to the principle of good faith, China will give way to some reasonable technical measures in the formulation and restriction of technical measures so as to adhere to the principle of good faith and ensure the effectiveness of other measures such as trademark legislation and law enforcement [7]. Several rules and regulations in China's Patent Law embody the principle of good faith to a certain extent. If the patent applicant carries out the cost of the patent, the patent application will be stopped immediately.

5. The Principle of Fairness and its Application

The principle of fairness means that civil activities should follow the principle of fairness. The principle of fairness is the embodiment of justice and equity in the field of private law. In the process of determining intellectual property rights and distributing benefits, accidents are likely to occur, causing conflicts and disputes between two or more parties, and the law cannot clearly judge. At this time, the intellectual property law should follow the principle of fairness. Information technology is updated very quickly, and as a special law to protect intellectual achievements and intellectual property rights, the speed of innovation is predictable. In order to promote the application of knowledge, the intellectual property law has established a system of rights restriction to restrict the content and exercise of the rights of intellectual property owners. The restriction of rights is mainly to enable the creditor to use intellectual property rights correctly, and to restrict the content and exercise of his rights. In the intellectual property law, property is divided into "intellectual property" and "material property", which have the same legal status in the intellectual property law. This first reflects the application of the principle of equality. The aim should be to promote technological innovation, technology transfer and technology dissemination, to promote the mutual benefit of producers and users of technological knowledge in a way conducive to social and economic welfare, and to promote the balance of rights and obligations. This requires that there must be a law to protect these spiritual properties, both domestically and internationally. It should be noted that equal protection does not include intellectual hegemony.

6. Principle of Legality and its Application

The principle of legality mainly refers to abiding by the laws and regulations of the state. All civil activities must abide by the regulations. If there are no effective regulations in the law, the requirements of the state and the government must be complied with. Regarding the confirmation of intellectual property rights, the Patent Law clearly stipulates that no patent right shall be granted to creations that violate the law and damage the public interest, and no patent right shall be granted to creations that are obtained through illegal means or genetic income. The concept of balance of interests emphasizes that the intellectual property system should be designed from the overall perspective of the state, society and individuals, and an appropriate balance point should be sought between various interests in order to achieve the goal of promoting the overall harmonious development [8]. The principle of prohibiting abuse of rights plays an important role in China's intellectual property law and is fully reflected. As stipulated in article 4 of the copyright law, "the copyright owner shall not violate the constitution and the law or harm the public interest in the exercise of copyright." Moreover, patents, trademarks, copyrights and industrial product designs are mostly specialized categories involving multiple disciplines and cross-disciplines, which are quite difficult to legislate and standardize. In the actual implementation, the intellectual property owner can change the legal effect appropriately through negotiation, but it is only limited to arbitrary norms, while mandatory and prohibited norms are not allowed to change. At the same time, there is also a real situation that cannot be ignored, that is, the object of legal adjustment of intellectual property rights is intangible, which is the fruit of intellectual work and intellectual achievements, and it will vary with the impact of objective factors such as the country's human environment, time and region. The constitution of our country also stipulates that no citizen may interfere with the rights of other citizens when exercising their rights, let alone harm the interests of the state and the collective.

7. The Principle of Public Order and Good Custom and its Application

Public order and good customs can be divided into "public order" and "good customs". The so-called "public order" refers to the general order necessary for the existence and development of the national society. Objectively, property and materials based on the name of intellectual property rights should be provided with equal legal status, and all property should be guaranteed the same. Under special circumstances, the parties may change the content and efficiency of legal norms through negotiation or other means, but any change of behavior shall ensure that it falls within the scope of the principle of autonomy of private law and shall not be changed at will. The purpose of the law is to meet people's various requirements and wishes. At the same time, as a means of social control, the law should also coordinate and distribute various interests. As is known to all, the concepts of related subjects of liability, legal relations, legal facts, civil acts and capacity for liability in civil law theory are the cornerstones of the civil law theory building. The principle of public order and good customs plays a very important role in intellectual property law. Whether the parties apply for copyright, trademark or patent rights, the content of their works must conform to the principle of public order and good customs, otherwise, the parties will not be able to obtain the corresponding intellectual property rights.

8. Conclusion

The application of a series of theories, legal thinking and logical framework in civil law in intellectual property legislation is very obvious, which can be seen from the particularity of the legal nature of intellectual property and the maturity and evolution history of civil legislation. The application of the basic principles of civil law in the intellectual property law can not only improve the intellectual property law, but also provide a proper and sufficient protection way for the intellectual property law. No matter whether there are explicit provisions in legal norms. No matter the parties have special agreement, the relevant contents of the basic principles of civil law will enter the legal relationship between the parties of intellectual property rights and become their natural contents. Intellectual property law has its particularity and belongs to the scope of civil law. The basic principles of civil law should also be followed in its implementation. In view of the loopholes in it, we will continue to improve the legislation.

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