

Research on the Bona Fide Protection in Intellectual Property Transaction

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Abstract: The traditional system of bona fide acquisition in civil law plays an important role in the transaction of real right in our country. As long as it conforms to the constitutive requirements of bona fide acquisition, the change of real right will occur between the original owner and the bona fide third party. In our country, the object of intellectual property has the characteristics of invisibility, which is similar to the object of real right in essence, so it is feasible to apply the system of bona fide acquisition in the field of intellectual property. This paper mainly analyzes the bona fide protection of intellectual property rights from the current situation, problems and the future development of the system of bona fide acquisition of intellectual property rights, and puts forward suggestions for the improvement of the system of bona fide protection in intellectual property transactions, which can provide some reference for the improvement of relevant laws and regulations concerning intellectual property rights.

Keywords: Intellectual Property; Bona Fide Acquisition; Reliance Interest; System Improvement

1. Basic Theory

1.1 Jurisprudential Analysis of the System of Acquisition in Good Faith

1.1.1 Bona fide acquisition in civil law

In the traditional concept, good faith means that in civil transactions, one party does not know and should not know that the other party is the person who has no right to dispose of the transaction. Acquisition in good faith is a legal system in which the transferee can acquire the ownership of the transferred property in good faith and the original property owner can not require the bona fide transferee to return the

property. There are still some disputes in academic circles and judicial practice about whether intellectual property is applicable to the system of bona fide acquisition and how to use the system of bona fide acquisition.

1.1.2 Value analysis of traditional bona fide acquisition system

The traditional bona fide acquisition system is actually a game between the original obligee and the bona fide third party [1]. The law does not protect people who sleep on rights. If the original obligee does not exercise his own rights and gives up relief, and allows the person who has no right to dispose to trade with others who do not know by virtue of his own rights, the original obligee will not be protected by law. In order to protect the trust interests of the third party and the economic interests they have paid, the law will protect the bona fide third party, so as to better promote the safety of market transactions, stimulate the vitality of the market, and build a trust barrier for the development of social economy.

1.1.3 Legal effect of bona fide acquisition system in intellectual property

It is reasonable to apply the system of bona fide acquisition to intellectual property rights. The field and legal provisions of intellectual property are complex, so the application of bona fide acquisition system in different fields is also different, which needs to be analyzed according to the characteristics of rights in different fields. Copyright in intellectual property is divided into personal copyright and property copyright, among which personal copyright is inseparable from the copyright owner and is not applicable to bona fide acquisition, while property copyright can be transferred and pledged according to law, which has the property nature of ordinary real right and can be acquired in good faith. There are different opinions on whether the patent right can be obtained in good faith, but our

country has adopted the patent publicity system for the patent, so that the third party has the possibility to know the ownership of the patent right objectively, so there is a rationality to apply the system of bona fide acquisition. For trademark rights, it is necessary to adopt the system of not confronting a bona fide third party without filing, and it is more complicated to apply the system of bona fide acquisition in practice, so we should choose carefully. In our country, the application of bona fide acquisition system in real right has been relatively perfect. In recent years, with the continuous development of intellectual property rights, there is an urgent need for bona fide acquisition system in the field of intellectual property rights, and further improvement of legislation is needed to better protect the interests of the obligee.

1.2 Basic Types of Intellectual Property Transactions

1.2.1 Connotation of intellectual property transaction

Transaction, as a frequently used word in our daily life, can be understood as the act that one party delivers the property to others and the other party pays the corresponding consideration according to the agreement between the two parties. In intellectual property rights, intellectual property transactions are manifested in the transfer, licensing and pledge of intellectual property rights. In an intellectual property license, the intellectual property owner is the licensor and the other party is the licensee. In the pledge of intellectual property rights, the owner of intellectual property rights is the pledgor, and the other party is the pledgee.

1.2.2 Basic types of intellectual property transactions

The scope of intellectual property transactions is becoming more and more extensive, and the types of transactions are becoming more and more diverse, including intellectual property licensing, intellectual property pledge and intellectual property trust [2].

The licensing of intellectual property rights is a legal act of authorizing others to use intellectual property rights within a certain period and scope without changing the ownership of intellectual property rights and with the consent of the intellectual property owner. Specifically, according to the scope of

the license, it can be divided into exclusive license, exclusive license and ordinary license.

Intellectual property pledge refers to a kind of financing behavior in which the intellectual property right holder pledges the property rights in the intellectual property rights such as patent right, registered trademark exclusive right, copyright and so on, obtains funds from banks and other financing institutions after evaluation, and repays the principal and interest of the funds on time. Intellectual property trust refers to a kind of trust business in which the owner of intellectual property entrusts his intellectual property to a trust institution, which manages or disposes of it in order to realize the value of intellectual property.

With the continuous expansion of the intellectual property trading market, in real life, the types of intellectual property transactions are also increasing, not only limited to the above types of transactions, but also better stimulate the vitality and enthusiasm of the intellectual property trading market.

1.2.3 Dilemma of intellectual property transaction

As an intangible asset transaction, intellectual property transaction has certain risks. The risks of the transaction are mainly reflected in the complexity of the legal provisions on intellectual property transactions. For example, if a copyright exclusive license contract or transfer contract is concluded, it may be filed with the copyright administrative department. The transfer of patent right and patent application right takes effect from the date of registration. For trademark licensing, it is not allowed to confront bona fide third parties without filing and registration. When analyzing the real attribution of intellectual property rights, different legal provisions have different criteria for judging, which makes it more difficult to infer whether the transferor is an unauthorized disposition, whether the transferee is a bona fide acquisition and whether the real obligee is liable. With the diversification of the types of intellectual property transactions, how to balance the interests of intellectual property owners and bona fide third parties is one of the difficulties faced in intellectual property transactions [3].

2. Analysis of the Current Situation of Bona Fide Protection Involved in Intellectual

Property Transactions

2.1 Common Types of Disputes in Intellectual Property Transactions

The parties are not smooth sailing in civil activities, and there are often some disputes and intrusions. Of course, there is no exception in intellectual property transactions. The common types of disputes in intellectual property transactions are intellectual property ownership disputes, intellectual property infringement disputes, intellectual property administrative disputes and so on.

Intellectual property ownership disputes, that is, who is the real owner of intellectual property rights, who can exercise intellectual property rights. For example, A is an employee of A company, who uses the main material conditions of A company to complete the invention, and applies for a patent right after the invention is completed, which involves the dispute over the ownership of the patent right between A and A company.

Intellectual property administrative disputes, that is, disputes arising from the refusal of the parties to intellectual property rights to the decisions made by the administrative organs of intellectual property rights. For example, administrative reconsideration shall be initiated against the intellectual property administrative organ. Intellectual property infringement disputes, which are mainly disputes between intellectual property rights holders and unspecified third parties due to infringement, can be understood as the other party's unauthorized use of its intellectual property rights and profit from it without the permission of intellectual property rights holders. For example, patentee A and B reach an agreement on the transfer of patent rights, and agree to register the transfer of patent rights two days later, and C is present when the agreement is reached. B and C agreed that C would use its patent, and C paid the royalty. Two days later, A did not register the patent transfer. The transfer of the patent takes effect at the time of registration, which involves the issue of bona fide acquisition of intellectual property rights for C.

2.2 Judicial Status Quo of Bona Fide Protection in Intellectual Property Transactions

Our country once excluded the application of bona fide acquisition system in intellectual property rights because of adhering to the concept that things must have body in Germany and Japan. In 2014, the attitude of Chinese courts changed significantly. In a patent case heard in that year, the Supreme People's Court said: "The patent right that has been granted is mainly a kind of property right, which is similar to the real right in nature and has a universal nature." In order to ensure the security of transactions and protect the interests of bona fide third parties, if there are no exceptions, the transfer of such rights can generally refer to the provisions of the Property Law on bona fide acquisition of real rights. As for the patent right, because it is no different from the ordinary property right after publicity, under the influence of the Supreme People's Court, the major courts have begun to apply the system of bona fide acquisition in the field of patent right. Since then, the People's Court of Siming District of Xiamen City has supported the bona fide acquisition of trademark rights for the first time in 2016 [4]. But there are also voices of opposition from the court. For example, the Chengdu Intermediate Court refused to apply the rule of bona fide acquisition in a copyright case in 2022, believing that the defendant "has no legal basis for applying the relevant opinions of bona fide acquisition system". It can be seen that the courts of our country have not yet reached a conclusion on whether the system of bona fide acquisition can be applied in the field of intellectual property rights.

2.3 Theoretical Disputes on Bona Fide Protection in Intellectual Property Transactions

There are also different opinions on whether intellectual property can be applied to bona fide acquisition in academic circles. The scholars who hold the opposite opinion think that the object of intellectual property is incorporeal, which is different from the corporeal object of real right. Even if the registration system is adopted for trademark

rights and patent rights, its effectiveness is not as strong as that of the delivery and registration of real rights, and in the actual registration process, there are often errors in registration, so it does not have a reliable appearance of power. The scholars who hold the supporting opinion think that both the effective registration system and the registration confrontation system of intellectual property rights have certain publicity, certain appearance of rights, and certain trust interests. Secondly, due to the characteristics of strong mobility and dissemination of intellectual property rights, we should not only protect the rights of intellectual property rights holders, but also take into account the interests of bona fide transferees [5].

However, the scholars who support the opinion also have disputes about how to apply the scope of the bona fide acquisition system to intellectual property rights, that is, whether all intellectual property rights can be applied to the bona fides acquisition system [6]. Some scholars believe that whether the registration of intellectual property rights is effective or not, it should be applied to the system of bona fide acquisition, while others believe that only specific intellectual property rights that can be publicized and trusted can be applied to the system of bona fide acquisition.

Thus it can be seen that the bona fide acquisition system in intellectual property transactions in China is still controversial. With the rapid development of intellectual property in China and the increasing scale, the bona fide acquisition system needs to be further improved.

3. The Path Choice of Bona Fide Protection in Intellectual Property Transaction

3.1 Analysis of the Causes of Bona Fide Protection in Intellectual Property Transactions

The object of right refers to the object to which the right is attached. The object of intellectual property is the object that intellectual property is attached to, that is, intellectual achievements. Because intellectual property rights include patent rights, copyrights, trademark rights and so on, intellectual achievements are also

manifested in inventions, works and so on [7]. Analyzing these intellectual achievements, it is not difficult to find that their essence is information. Information has the following attributes: 1. Intangibility. Information itself is intangible. 2. Mobility, human instinct determines the characteristics of the continuous flow and dissemination of information. 3. Non-consumptive. Once information is formed, it is an inexhaustible resource. When information is provided to one person, it does not reduce the amount of that information possessed by another person.

The above attributes of information determine that after information is generated and made public to the society, it is difficult for the producers of information to control it. To put it simply, there are certain differences between the object of intellectual property rights and the object of real rights, because the space volume occupied by intellectual property rights at the physical level is different from that of real rights, so there will be no corresponding loss with the passage of time. In the analysis of social practical problems, it is the invisibility of intellectual property rights that leads to the corresponding problems in the application of bona fide acquisition system of intellectual property rights.

The system of bona fide acquisition originated from the rule of hand protection in Germanic law, and then was inherited and developed by some countries of civil law system, and was used for reference by our country in civil and commercial legislation. Compared with other countries, the development of intellectual property rights in China is relatively late, and the legislative system in all aspects is not perfect. However, from the perspective of other countries in the civil law system, there is no consensus on whether the system of bona fide acquisition can be applied to intellectual property rights. For example, in Germany, the traditional theory holds that the provisions of bona fide acquisition in the German Civil Code are not applicable to the field of intellectual property rights, and its refusal to apply the system of bona fide acquisition is inevitable. In Germany, the acquisition of patents and trademarks does

not need to be registered, in other words, registration is not a requirement for the effectiveness of patents and trademarks. In Japan, some special provisions have been adopted, although the system of bona fide acquisition is not applicable in the field of intellectual property rights, but some protective measures have been taken for bona fide third parties, that is, bona fide third parties have certain right to use according to the contract. To a certain extent, this measure protects the trust interests of bona fide third parties.

In the common law system, most countries hold a positive attitude towards the application of bona fide acquisition in the field of intellectual property rights. For example, in the United States, the Supreme Court of the United States agreed in 1879 to introduce the system of bona fide acquisition in common law into the patent field, which means that the later bona fide assignee can acquire the patent right after paying the full consideration. The fourth paragraph of Article 261 of the Patent Law of the United States stipulates that "the interest arising from the transfer or authorization shall not be held against the transferee or mortgagee who subsequently pays a considerable amount of money without notice, unless it has been registered in the Patent and Trademark Office within three months from the date of the transfer or authorization or before the subsequent transfer or mortgage." Although the article does not explicitly state the application of bona fide acquisition, the Court of Appeals for the Federal Circuit of the United States has clearly recognized that this clause is based on the rule of bona fide acquisition. In the field of trademark and copyright, American courts have also agreed to the application of bona fide acquisition system. For our country, it is obviously unreasonable to copy the application of bona fide acquisition in civil law system or common law system. As for the effective system of intellectual property rights in different fields, the provisions of our country are obviously different from the meaning doctrine of the civil law system and the common law system [8]. For example, patents and trademarks in our country adopt the principle of registration

and effectiveness. Therefore, for the continental law system and the common law system, our country can only draw lessons from it limitedly, and we should make a concrete analysis of the application of bona fide acquisition system in intellectual property rights according to the actual situation of our country. Because the development of intellectual property rights in China lags behind that in other countries, the legal system and theoretical basis in all aspects are not perfect enough, so we should concentrate our efforts on overcoming this problem.

3.2 Necessity and Rationality of Bona Fide Protection in Intellectual Property Transactions

3.2.1 Necessity of bona fide protection in intellectual property transactions

The system of bona fide acquisition is of great significance to the promotion of China's economic development. If the transfer relationship is invalid because the transferor has no right to dispose of it after the establishment of the transfer relationship, the bona fide third party will not have the right or goods to return, which will have a negative impact on the development of China's transactions, not only reduce the security of transactions, but also cause the lack of trust interests in transactions. In recent years, China's intellectual property rights have developed rapidly. Therefore, in order to stabilize the development of intellectual property industry and meet the needs of building a more secure, innovative and trusted intellectual property trading system and platform, it is necessary to establish bona fide protection in intellectual property transactions.

3.2.2 Rationality of bona fide protection in intellectual property transactions

It is generally believed that the object of bona fide acquisition system is the thing, that is, movable property and immovable property. However, with the development of economy, the object in civil relations is not only limited to the thing, such as virtual property and other intangible assets also belong to the object of transaction, and the traditional bona fide protection system has been insufficient to protect the legitimate

rights and interests of bona fide third parties. If we stick to the protection scope of the traditional bona fide acquisition system, it will lead to the danger of the trading environment and the crisis of trust between traders. First of all, the object of intellectual property itself has the characteristics of strong liquidity, and the application of bona fide acquisition system to protect it in intellectual property will better safeguard the security of transactions and promote the circulation of transactions. Secondly, the application of bona fide protection of intellectual property rights should also take into account the characteristics of different rights in intellectual property rights for specific application, and it is not appropriate to adopt a "one-size-fits-all" policy, such as patents and trademarks in intellectual property rights, which can only have legal effect through registration, have certain trust interests, and have the credibility of the government. Therefore, it is reasonable to apply the system of bona fide acquisition in the field of patents and trademarks. Although copyright does not need to be registered as an effective element, in practice, the property right in copyright itself has the property attribute, if the property right in copyright has a way to let the third party know the ownership of its rights, it is also reasonable to apply the system of bona fide acquisition.

3.3 Improvement of the System of Bona Fide Protection in Intellectual Property Transactions

3.3.1 Legal conception of the application of the regime of protection in good faith

In order to construct a bona fide protection system in intellectual property transactions, the first thing is to abide by the basic principles of civil law and conform to the basic norms of civil law. First of all, the principle of equality, that is, the status of the parties in civil activities is equal, intellectual property transactions are also a kind of civil activities, internal restrictions on rights do not confront the third party who does not know. For the principle of voluntariness, that is, the parties can decide whether to participate in civil activities according to their own hospitals and bear the responsibility for the consequences of

their participation in civil activities, which also binds the obligee and the bona fide third party. The most important is the principle of good faith, that is, the parties must be honest and trustworthy when exercising their rights and performing their obligations, which includes two meanings: the first meaning is that when the intellectual property right holder registers the intellectual property right, his intention should be true, and the object of his right should be true, otherwise the law will not support it. The second meaning is that when exercising rights, rights holders should take the principle of honesty and trustworthiness as the framework, in which they exercise their rights legally without malice. If not, when arguing about the ownership and use of rights, it will cause unnecessary trouble to bona fide third parties, increase their burden of proof, and is not conducive to protecting the interests of bona fide third parties.

In order to better protect intellectual property rights, it is more important to make a reasonable analysis of the characteristics of intellectual property rights. At present, how to apply bona fide acquisition of intellectual property rights should be analyzed from the following issues: First, whether the publicity of intellectual property rights has credibility and trust interests. Some scholars believe that the publicity of patents and trademarks does not have the same credibility as the publicity of property rights. Therefore, in solving the application of bona fide acquisition system in intellectual property rights, we should fully consider the credibility of intellectual property rights. In practice, the registration of intellectual property rights is often due to the intangibility of the object of intellectual property rights, and the registration of the obligee does not verify the identity and qualification of the obligee like the registration of real estate, so there are often some registration errors in the registration of rights, which will reduce the public's credibility on the registration. When applying the system of bona fide acquisition to intellectual property rights, we should first improve the registration issue [9]. Second, clear the constituent elements of

the application of bona fide acquisition system in intellectual property rights. Third, clarify the imputability of the real obligee. Fourth, clarify the legal consequences of the application of bona fide acquisition system in the field of intellectual property. The latter three issues will be explicitly explained below.

3.3.2 Constitutive elements

The system of bona fide acquisition in civil law has four constitutive elements. If we want to apply the system of bona fide acquisition in intellectual property rights, we should not only conform to these constitutive elements, but also have special constitutive elements. First, the transferee should be in good faith, that is, the person who has no right to dispose does not know that he has no right and has no gross negligence. Correspondingly, if the transferee clearly knows or has gross negligence, it can not constitute good faith. As for whether the parties in a specific case constitute good faith, we should also make a concrete analysis of the specific issues and make a clear and accurate division of the criteria for constituting good faith. Secondly, the person who disposes has no right to dispose, where the disposition is a legal act and will lead to the change of rights, and the parties have the appearance of power. Thirdly, there is a reasonable act of publicity and public trust, which shows that other people have a way to know the change of rights, and for different intellectual property rights, the way of publicity and public trust is also different. No matter what kind of intellectual property, if it does not carry out publicity and public trust, it will greatly reduce the degree of trust, only the intellectual property of publicity and public trust can be applied to the protection of bona fide acquisition system. Fourthly, the transferee has paid a reasonable consideration. In practice, the judge judges and evaluates the price according to the specific object of the transaction and the market price. Fifthly, the disposition of intellectual property rights is legal and effective, that is, the transaction between the bona fide third party and the unauthorized disposer should be true, and the real transaction exchange should be carried out, on the contrary, if

there is fraud in the transaction process, it does not conform to the proper meaning of bona fide protection.

3.3.3 Imputability of the real obligee

The application of bona fide acquisition system requires not only that the third party does not know that the other party has no right to dispose and has no gross negligence, but also that the real obligee has imputability. The imputability here means that the real obligee has the reason to bear the corresponding responsibility, that is, the legitimate reason for the real obligee's right to be damaged. When the real obligee is liable, the law can protect the interests of the bona fide third party. Obviously, the object of intellectual property has the characteristics of intangibility, and the obligee can not possess and control it as a tangible object. Therefore, some views hold that the obligee of intellectual property is not liable. However, for example, patents and trademarks can be publicized by recording them in the register. If the real obligee is at fault for the errors in the registration process, it is liable.

The situation of imputability includes that the real obligee intentionally creates a false appearance of the right, or knows that others use the false appearance of the right to trade and indulge. At this time, the real obligee has subjective fault, and his behavior can be attributed, so the real obligee should take positive actions to prevent the existence or generation of false right appearance. When the contract is revoked or invalid, the real obligee may also be at fault. For example, if the contract is revoked because of fraud or gross negligence, the real obligee may not be intentional at this time, but because of his negligence, he is liable. If the contract is revoked because of coercion, the real obligee is not voluntary, but forced to establish the contract, so there is no imputability for the real obligee. The object of intellectual property itself has its particularity, and in real life, the types of intellectual property transactions are varied, so it is of great significance to judge the imputability of the real obligee, and accurately judging the imputability of the real obligee is an important prerequisite for the application of bona fide acquisition

system in the field of intellectual property.

3.3.4 The legal consequences of applying the system of bona fide acquisition in intellectual property transactions.

When the system of bona fide acquisition is applied in the field of intellectual property, it will cause the change of rights between the real obligee and the bona fide third party [10]. The bona fide third party acquires the rights because of the system of bona fide acquisition, and the real obligee loses the rights accordingly, and can not request the bona fide third party to return the rights. Although the real obligee can not request the bona fide third party to return the right, he can take remedies such as tort liability and breach of contract liability to the unauthorized disposer to make up for his losses. In the field of intellectual property, bona fide acquisition is mostly related to publicity errors, because the object of intellectual property is invisible, often only through registration and other means of publicity, it is the wrong publicity that leads to the third party outside the parties to have a trust interest in the person who has no right to dispose, of course, the real obligee can also recover from the publicity department.

4. Conclusion

We can see that the biggest difference between intellectual property rights and real rights is the different nature of the object, and it is reasonable and necessary to apply the system of bona fide acquisition to some rights in intellectual property rights. In order to better apply the system of bona fide acquisition in the field of intellectual property, it is necessary to clarify the elements of bona fide acquisition, the attribution of the real obligee, the legal consequences of bona fide acquisition and other issues, and to apply the system of

bona fide acquisition according to the specific characteristics of rights in the field of intellectual property.

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