Patent Insurance is Beneficial for China's Foreign Trade Enterprises to deal with the Intellectual Property Barriers of the US

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Abstract: In recent years, the number of patent cases involving Chinese foreign trade enterprises under 337 investigations in the United States has continued to rise. The high litigation costs have led to multiple uncertain outcomes of rights protection, which has deterred many foreign trade enterprises. China is currently conducting pilot demonstrations of patent insurance. However, each pilot project has problems such as patent insurance largely relying on fiscal subsidy for promotion and low enthusiasm of enterprises to purchase patent insurance at their own expense. It is suggested that China's foreign trade enterprises use patent insurance to deal with 337 investigations in the United States. For instance, strategies such as targeted selection of patent insurance products, full utilization of patent insurance to actively respond to lawsuits, and establishment of a long-term mechanism of "patent insurance + enterprise compliance" can be adopted to reduce premiums, increase insurance amounts, enhance the enthusiasm of enterprises to respond to lawsuits, and adopt reasonable response strategies to effectively deal with the Patent insurance is beneficial for China's foreign trade enterprises to deal with the intellectual property barriers of the United State by the United States.

Keywords: Foreign Trade Enterprises; 337 Investigation; Intellectual Property Barriers; Patent Insurance; Suggestions

1. Introduction

Patent insurance is a commercial insurance contract concluded between the policyholder and the insurer. The policyholder takes the patent rights they hold as the subject matter, and the insurer provides premium coverage for legal risks arising from the creation, protection and application of the relevant patents in accordance with the terms of the contract. Patent insurance has developed in China for less than two decades, but it is of great significance for Chinese foreign trade enterprises to deal with intellectual property barriers such as Section 337 investigations. Therefore, it is necessary to explore the problems existing in the implementation of the current patent insurance system in our country, so as to provide references for improving the patent insurance system suitable for foreign trade enterprises to deal with foreign intellectual property barriers.

2. The Development Process of China's Patent Insurance System

In 2008, China promulgated the "Intellectual Property Strategy Outline", proposing to use fiscal and financial policies to guide and support market entities in creating and applying intellectual property rights. In 2011, eight departments including the Ministry of Science and Technology, the Ministry of Finance, and the State Taxation Administration jointly issued the "Several Opinions on Promoting the Integration of Science and Technology with Finance and Accelerating the Implementation of the Independent Innovation Strategy", explicitly stating that they would actively promote the development of science and technology insurance, marking the official start of patent insurance business in China.

In 2010, China's patent insurance took a step forward. Foshan, Guangdong Province, was the first to adopt a patent insurance pilot model. The Intellectual Property Office of Chancheng District, Foshan City, cooperated with Cinda Property & Casualty Insurance and signed China's first patent insurance contract[1]. The premium for a patent ranges from 2,200 to 12,000 yuan, with a coverage of six times the premium. In the event of an insured incident, the expenses incurred by the insured for collecting

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evidence of patent infringement, as well as necessary expenditures such as transportation and legal fees due to patent litigation, will be borne by the insurance company.

In 2012, the State Intellectual Property Office selected five regions including Zhongguancun in Beijing and Guangzhou City in Guangdong Province as the first batch of pilot areas for patent insurance[2]. The Beijing Intellectual Property Office provided special funds to subsidize the premiums. When insuring, one can either insure each patent, each commodity, or each enterprise as a unit. By the end of the same year, 20 cities including Fuzhou and Dongguan were qualified to implement the second batch of patent insurance pilot programs[3]. By the end of 2022, patent insurance business had been launched in over 20 provinces and nearly 100 cities across the country, and the patent insurance system had been implemented nationwide. Among them, 12 cities in Guangdong Province, including Foshan, Jiangmen, Huizhou and Zhaoqing, were included in the patent insurance pilot program by the National Intellectual Property Administration. In 2016, the pilot and demonstration work of patent insurance began. Nine places, including Nanjing, Shenzhen and Chancheng District of Foshan City, were designated by the National Intellectual Property Administration as the first batch of pilot and demonstration regions for patent insurance for a period of three years. Each demonstration area has further strengthened organizational leadership and publicity and training, and introduced support and subsidy policies for patent insurance, thus improving the patent insurance service system.

Since 2022, patent insurance has gradually become one of the components of comprehensive technology insurance or intellectual property insurance. The specific manifestations are: Patent insurance has become a component of comprehensive insurance for major scientific and technological breakthroughs. For instance, the "Suichuangbao" policy signed by the National Institute of Nanotechnology Innovation in the Guangdong-Hong Kong-Macao Greater Bay Area, Guangzhou Laboratory and PICC Property & Casualty Company Limited not only covers patent insurance but also It also includes risks throughout the entire process of scientific and technological research and development, technology transfer, large-scale production, and intellectual property rights protection. Guangzhou Daily New Flower City. "Suichuangbao" has been officially launched, and the Guangzhou Development Zone has established a full life-cycle intellectual property insurance system.;" Patent insurance has become a component of intellectual property insurance. For instance, in 2022, Dongguan expanded from seven traditional patent insurance types to cover a total of 16 intellectual property insurance types including patents, trademarks and Copyrights. The "Shenzhen Intellectual Property Insurance Product List (2025 Edition)" covers intellectual property categories such as patents. Including 81 types of intellectual property insurance such as overseas intellectual property rights protection insurance and patent licensing credit insurance; Patent insurance has become a component of patent-intensive product liability insurance. For instance, in February 2025, PICC Property & Casualty provided the first insurance policy for the world's first "acellular corneal implant" developed by a certain medical technology company in Guangzhou. The coverage included personal and property losses caused by potential defects of the product. And comprehensive intellectual property application insurance such as patent invalidation application fees and patent infringement liability.

3. Problems Existing in the Pilot Program of Patent Insurance in China

Patent insurance, to a certain extent, is conducive to safeguarding the patent rights of right holders. Patent insurance has gradually evolved from a single type of insurance to a comprehensive one, with a greater emphasis on promoting the transformation and application of patents. However, due to the relatively short operation time of patent insurance in our country, although enterprises' awareness of insurance has improved to some extent, they still rely heavily on government subsidy funds. As a result, there are still some problems in the pilot demonstration of patent insurance.

3.1 The Purchase of Patent Insurance is Largely Driven by the Government's Financial Subsidy Policies

The insurance premium for patent insurance mainly relies on policy-based financial subsidies from local intellectual property authorities.

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From the perspective of various pilot demonstrations, the insurance premiums for intellectual property insurance types, including patent insurance, in all regions across the country are either fully or partially subsidized or funded by the local intellectual property administrative department's fiscal funds. For instance, the Shenzhen Market Supervision and Administration Bureau offers a maximum subsidy of 50% of the actual premium paid to enterprises and public institutions in Shenzhen that purchase intellectual property insurance such as patent infringement loss insurance, overseas infringement liability insurance, and patent enforcement insurance. The total annual subsidy for the same applicant is capped at 200,000 yuan.

3.2 Enterprises are not very Enthusiastic about Purchasing Patent Insurance at Their Own Expense

Although the scale of intellectual property insurance in China, including patent insurance, has exceeded 100 billion yuan by 2023, most enterprises, as policyholders, do not choose to purchase insurance at their own expense. On the one hand, the widespread existence of the Chinese people's aversion to litigation. Patent insurance is often directly associated with litigation. Since ancient times, the Chinese have been averse to litigation and have always valued "harmony". After encountering patent infringement, enterprises have very little or no awareness and measures to safeguard their patent rights. They often resort to methods such as "turning major issues into minor ones and minor ones into nothing" or even "settling privately" to solve problems. The non-litigation nature that emerges in patent rights protection makes it difficult to carry out litigation insurance business, which is one of the obstacles for the patent insurance system to take root and grow. However, in international patent infringement litigation, what will be faced are extremely valuable patent rights and huge patent litigation expenses. Participating in patent insurance plays a positive role in enhancing the competitiveness of China's foreign trade enterprises. On the other hand, relevant enterprises have limited understanding of patent insurance. Subjectively, relevant personnel of enterprises either show no concern for patent insurance or believe that the role it can play is limited. After all, the patent insurance system in our country has been in operation for less than 20 years. However, the risk-sharing mechanism of insurance relies on a large number of insured participants. Judging from the pilot situations of patent insurance in various regions, enterprises are not very enthusiastic about purchasing insurance at their own expense. Once the fiscal funds no longer subsidize the premium expenditures, the pilot situations of patent insurance in many places will be even more awkward.

3.3 In Some Regions, both the Premium and the Amount of Patent Insurance are Relatively Low

Patent insurance in China has reached a considerable scale. According to the "White Paper on the Development of Intellectual Property Insurance in China (2022)", by the end of 2022, China had provided over 110 billion yuan in intellectual property insurance coverage for more than 46,000 patents of over 28,000 enterprises.

However, in contrast to this, the generally low compensation amount of patent insurance makes it difficult to effectively maintain patent rights. According to the investigation, an expense related to a patent lawsuit is approximately 100,000 yuan. To better realize the risk-resistance role of patent insurance and increase the compensation limit of patent insurance[4], Chancheng District of Foshan City, Guangdong Province has adopted a package insurance policy for 10 patents and set up three insurance plans directly linked to the insurance amount and premium. The premiums are 8,000 yuan, 12,000 yuan and 16,000 yuan respectively, corresponding to compensation limits of 15 times, 30 times or 90 times respectively.

4. Section 337 Investigations Occupy a Core Position among the Intellectual Property Barriers in the United States

4.1 The Four Major Types of Intellectual Property Barriers in the United States

There are mainly four types of intellectual property barriers in the United States. The first type is the barrier of legal systems and international rules. For instance, high-standard intellectual property protection rules are established through domestic laws such as the Patent Act and the Copyright Act. The patent protection period is 20 years and can be extended through filing applications. Copyright protection covers new types of objects such as digital works and business models. For instance, by taking advantage of the dominance of international rules to form barriers, free trade agreements such as the CPTPP require contracting parties to extend patent protection to areas like drug data and agricultural chemical products. The second is the administrative law enforcement barrier. For instance, the Customs and Border Protection (CBP) conducts proactive inspections on imported goods. In 2024, it detained over 30,000 batches of infringing goods, involving an amount of more than 2 billion US dollars. The Homeland Security Investigation Service (HSI) conducts cross-border criminal investigations through the National Intellectual Property Coordination Center (IPR Center) and, in 2025, collaborates with multiple countries to solve numerous cross-border infringement cases. For instance, in the case of industry-specific law enforcement mechanisms, a "patent linkage" system has been established for the pharmaceutical field, requiring the verification of patent status during drug approval. Crack down on trade secret infringement through the Computer Fraud and Abuse Act; And the 337 investigation system, etc. The third is the unilateral assessment system. For instance, the Office of the United States Trade Representative (USTR) releases an annual report, classifying countries into four categories such as "priority observation countries", and initiates Section 301 investigations against countries that are "poorly protected". For instance, the additional conditions for market access require foreign enterprises to submit detailed proof of intellectual property compliance when entering the US market. The fourth is judicial barriers, which are specifically manifested as high litigation costs and punitive damages systems. The average litigation cost of intellectual property cases in federal courts exceeds 2 million US dollars. The evidence disclosure procedures (such as the need to cover global servers for electronic data forensics) are lengthy, which is not conducive to the defense of small and medium-sized enterprises. The compensation amount for patent infringement cases can be as high as three times the actual loss. In 2024, a Chinese enterprise was ordered to pay 1.2 billion US dollars in compensation for chip patent infringement.

4.2 337 Investigation Holds a Core Position in the Intellectual Property Barrier System

First, from the perspective of institutional positioning, Section 337 investigations have quasi-judicial attributes. Section 337 investigation is an import review procedure implemented by the United States International Trade Commission (ITC) in accordance with Section 337 of the Tariff Act of 1930. It is characterized by its extremely wide jurisdiction, efficient and strict procedures, and powerful sanctions, and it combines administrative efficiency with judicial authority[5]. Its jurisdiction covers almost all types of intellectual property rights, including patents, trademarks, and trade secrets. Over 85% of the cases are related to patent infringement, while the rest involve unfair competition behaviors such as counterfeiting and false advertising. The investigation process, from filing a case to the final ruling, only takes 9 to 15 months, which is much faster than litigation in federal courts. After the initial ruling by the administrative judge and the review by the ITC, the president's veto rate was less than 1%. Sanctions include the issuance of limited exclusion orders (for specific enterprises) or general exclusion orders (for all similar imported products). For instance, in a consumer electronics case in 2025, a general exclusion order led to the withdrawal of 12 global enterprises from the US market.

Second, from the perspective of functional role, Section 337 investigations aggregate the triple barrier effect. A Section 337 investigation can lead to a direct market blockade and pose a deterrent to the industrial chain[6]. The Section 337 exclusion order is directly enforced by the CBP. Once infringing products are included in the list, there is no possibility of evading imports. In 2024, the ITC issued a total of 47 exclusion orders, involving an amount exceeding 5 billion US dollars. In Section 337 investigations, they can be traced back to upstream suppliers. In a certain automotive parts case in 2025, three Chinese raw material enterprises were jointly sanctioned for related infringement, forcing downstream assembly plants to change their supply chains. Not only that, the criteria for determination such as the "doctrine of equivalents" and "functional features" formed in the adjudication of related cases have become the rules for intellectual property judgments in the United States and even globally.

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From the survey results, it can be seen that it forms a synergy effect with other intellectual property barriers. Infringing goods detained by the Customs and Border Protection (CBP) are often used as preliminary evidence in Section 337 investigations. In 2024, 32% of Section 337 investigation cases cited customs inspection data. For instance, in Special 301 reports, the number of 337 investigation cases initiated is often used as the basis to determine whether the infringement is "serious". In the 2025 Special 301 report, 60% of the negative evaluations were accompanied by specific 337 investigation cases.

5. Suggestions on Utilizing Patent Insurance to Deal with 337 Investigations in the United States

In 2013, China became the world's largest trading nation, with its total import and export value exceeding 4 trillion US dollars. Since then, the development of foreign trade has been vigorous. By 2024, the total value of foreign trade imports and exports is expected to reach 43.85 trillion yuan, setting a new historical record in scale. In recent years, developed countries have used intellectual property barriers to restrict or exclude Chinese enterprises. The 337 investigation in the United States is a typical example of intellectual property barriers[7]. In 2024, a total of 74 Chinese enterprises were subject to Section 337 investigations, among which 45 chose to defend themselves, accounting for 60.8%. According to statistics, during the 21 years from 2003 to 2004, there were a total of 328 Section 337 investigations in the United States, among which 298 involved patent infringement, accounting for 90.8%. Section 337 investigations are characterized by their simple initiation procedures but serious consequences of losing a case. For Chinese enterprises, it is necessary to share the costs of patent infringement or being infringed through patent insurance, effectively resolving intellectual property trade barriers such as 337 investigations.

5.1 Select Patent Insurance Products in a Targeted Manner

Before taking out patent insurance, on the one hand, prepare sufficient insurance premiums for patent insurance and adjust them according to the development of the US market. On the other hand, discuss the key points of possible claims disputes and reach a consensus. Insured enterprises can, based on their own needs, give priority to choosing patent insurance products that clearly cover 337 investigations, such as overseas patent infringement liability insurance. During the patent insurance application stage, it is crucial to pay close attention to the claims terms in the insurance contract, such as whether the claims scope covers all the expenses from the start to the end of the 337 investigation, including US attorney fees, hearing fees, investigation fees, etc[8]. If the case is ultimately settled, compensation can be made for the patent licensing fees involved in the 337 investigation, patent infringement damages, and expenses incurred due to initiating the patent invalidation procedure, etc. If several enterprises jointly defend themselves in court, patent insurance can cover the shared costs in the joint defense. Patent insurance coverage can also be negotiated to cover patent analysis costs incurred due to circumventing existing technologies, ensuring the compliance of the enterprise's relevant technical solutions.

5.2 Make Full Use of Patent Insurance to Actively Respond to Lawsuits

After receiving the notice of the ITC initiating a 337 investigation, enterprises that have taken out patent insurance should actively defend themselves instead of ignoring it. On the one hand, the foreign trade enterprises involved in the case should entrust lawyers to participate in the case as soon as possible. They can give priority to entrusting lawyers or lawyer teams that have cooperated with insurance companies, especially those with experience in handling cases related to 337 investigations. Meanwhile, actively prepare relevant materials for the case, such as the comparison of key points of the involved patent technology and product technical descriptions, etc[9]. On the other hand, the foreign trade enterprises involved in the case promptly informed the patent insurance company of the relevant circumstances of the case and submitted materials related to the involved technology to the insurance company, such as the research and development records of the involved technology and the search reports of the involved technology, which could prove that there was no intention of subjective infringement, so as to avoid the insurance company's refusal to compensate.

5.3 Establish a Long-Term Mechanism of "Patent Insurance + Enterprise Compliance"

On the one hand, foreign trade investment enterprises should establish an internal intellectual property compliance system, regularly investigate patents related to the US market, and pay attention to the patent status of NPE enterprises to ensure that the patent technologies and other aspects involved in the products exported to the US comply with the laws and regulations of that country. On the other hand, it is important to make good use of the additional services of patent insurance, especially the other related resources bound to the patent insurance products purchased by the enterprise, such as choosing and connecting with patent technology appraisal institutions through patent insurance companies.

6. Conclusion

Under the background of economic globalization, enterprises that possess science and technology hold an active position in international competition. Patents represent the latest achievements of scientific and technological innovation. In international trade, patent holders take the initiative due to holding patents. The patent insurance system can effectively enhance the overall patent quality of the region. The active participation of foreign trade enterprises in patent insurance is conducive to strengthening their confidence in patent rights protection, improving the effectiveness of responding to the US Section 337 investigation, and promoting the healthy and stable development of China's foreign trade industry.

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