

司法实践中标准与专利的 冲突与解决

Conflicts and Solutions
between patents and standards
in Judicial practice

原最高人民法院知产庭庭长、教授、高级顾问
蒋志培博士

Dr Zhang Zhipei, former Chief Judge of the
IPR Tribunal of the Supreme People's Court
(SPC)、Professor、Senior Consultant

www.chinaiprlaw.cn

一、标准与专利是既有联系的两个不同体系

Standards and patents are both connected but different systems

(一) 标准与专利

(1) Standards and Patents

- 标准，是为了在一定范围内获得最佳秩序，经过协调一致制定，并由公认机构批准，共同使用和重复使用的一种规范性的文件。
- Standards, through the coordinated development and formulation, and approved by a publicly recognized institution, are the normative documents for common use and re-use within a certain range in order to get the best order.
- 专利等知识产权是公民法人和其他组织以智力劳动创造的知识财产所依法享有的民事权利。
- Patents and other intellectual property rights are the civil rights enjoyed according to law by citizens, corporations and other organizations by virtue of their intellectual property created by their intellectual work.
- 专利保护的通常是技术方案或者外观设计方案。
- Usually, patent's protection objects are technical schemes or design proposals.

(二) 标准与专利追求的效能和对企业的意义不同

(2) The differences in performance pursued by Standards and patents and in their significance for enterprises

- 标准，是为了实现社会效益的最大化，追求公益性、公开性和普遍适用性，属于公权利的范畴。标准对产业发展起到重要引领作用，实现社会生产水平的普遍提高和标准化。
- Standards, within the scope of public rights, aim to achieve the maximization of social benefits, and pursue the public welfare, openness and universal applicability. For industrial development, standards play an important leading role in achieving the common improvement and standardization of social production levels.
- 专利权等，是公民、法人和其他组织的知识财产的法律形式和保障，属于私权，体现了知识产权人的权益。在知识经济为特点的性经济发展时代，知识产权凸现巨大的商业价值。制度鼓励创新，保护民事主体的知识财产，达到发展经济和社会发展的目的。
- Patents and other intellectual property rights , within the scope of private rights, are the legal form and security of intellectual property created by citizens, corporations and other organizations, embodying the intellectual property rights and interests enjoyed by creators. In this current economic development era characterized with knowledge-based economy, intellectual property rights have highlighted the tremendous business value. Creating systems to encourage innovation and protecting the civil entities' intellectual property, are more helpful for achieving the purposes of economic development and social development.

二、涉及标准的权利冲突

Conflicts of rights involving standards

- (一) 知识产权与标准结合带来的影响

The effects brought from the intergration standards with IPR

- (二) 从标准出版的专有权说起

Starts from the exclusive rights of the publication of standards

- (三) 专利与标准的冲突

The conflict between patents and standards

- (四) 企业标准备案不算公开

For enterprises, to record a standard is not to open it

三、涉及标准权利冲突解决实践

Practice of conflict resolution referring to rights relating to the standard

- (一) 出版的特殊专有许可权和变化
Special exclusive rights and license change in publication
- (二) 专利与标准冲突处理司法实践
Judicial practice in dealing with conflicts between patents and standards
- (三) 专利侵权判定司法解释处理趋向
The determination of patent infringement and the trend of judicial interpretation

- 谢谢!
- Thanks!
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www.chinaiprlaw.cn
- For more information please contact: www.chinaiprlaw.cn
- judgejiang@china.com
- judgejiang@china.com
- 电话 (8610) 6505 1059; 6505 5557
- Tel: (8610) 6505 1059; 6505 5557