

# The Comprehensive Supervision and Administration Model Promotes the Settlement of "Intellectual Property Rights and Its Abuse"

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**Abstract**—In March 2018, the Central Committee of the Communist Party of China issued the “Plan for Deepening the Reform of the Party and State Institutions” and issued a notice requiring all regions and departments to conscientiously implement it in the light of the actual situation. The 34th item of it proposes to set up the State Market Supervision and Administration, reforming the market supervision system and implementing unified market supervision. And item 43 emphasizes the re-establishment of the State Intellectual Property Office, managed by the State Market Supervision and Administration. The highlight of these two items lies in the comprehensive management of intellectual property. The intellectual property and anti-monopoly are finally controlled by a national institution, which not only facilitates the coordination of the relationship between the two, but also improves the efficiency of coordinating their relationship. There were scholars having studied the relationship between “abuse of intellectual property” and “anti-monopoly” and come to a lot of valuable conclusions. From this perspective, this reform is a change from theory to practice, and also directly reflects the value of the research theory.

**Keywords**—reform of state institutions; comprehensive management of intellectual property; abuse of intellectual property; anti-monopoly

## I. INTRODUCTION

The definition of intellectual property has been included in the civil rights since it was introduced into China. Therefore, when studying the issue of “abuse of intellectual property”, domestic scholars naturally linked it to the “abuse of rights” in civil law. But so far, it is also very rare that the concept of “abuse of intellectual property” is formally used in the laws or judicial practices [1]. But it makes sense to link “abuse of intellectual property” to “abuse of rights”. According to the teleological interpretation, the abuse of intellectual property is the act of exercising intellectual property in a manner contrary to the purpose of setting the right and harming the legitimate interests of others or the public interest of society [2]. Even if domestic scholars in China disagree about the nature of “abuse of intellectual property”, but they agree that “abuse of intellectual property” is a very broad issue. For its definition, we cannot depend only on the narrower scope of the case law, but should

understand it in the light of the general meaning and the relevant doctrine of the teleological interpretation.

## II. COMPREHENSIVE SUPERVISION AND MANAGEMENT MODEL

The comprehensive supervision model is to establish a law-based government administration system with clear responsibilities. Before the reform, the responsibilities of departments were not clear, mainly reflected in the blank responsibilities, weak responsibilities, decentralized responsibilities, crossing and overlapping of responsibilities, and so on. The reason of setting up the State Market Supervision and Administration is that the responsibilities and resources of market supervision are too dispersed [3].

Item 34 of the “Plan for Deepening the Reform of the Party and State Institutions”: “Establishment of the State Market Supervision and Administration. ...The responsibilities of the State Administration for Industry and Commerce, the State Administration for Quality Supervision, Inspection and Quarantine, the State Food and Drug Administration, the price supervision and inspection and anti-monopoly enforcement of the National Development and Reform Commission, the concentration of anti-monopoly enforcement of the Ministry of Commerce and the Office of the State Council's Anti-Monopoly Commission and so on, all of these responsibilities are integrated on the State Market Supervision and Administration, as a direct agency under the State Council.” [4] The highlight, also the advantage, of the reform is the comprehensive supervision and management. According to item 43 of the same plan, the State Market Supervision and Administration will also manage the State Intellectual Property Office. Its’ direct administrative rights in the field of intellectual property is expressed on that “the comprehensive law enforcement team of the State Market Supervision and Administration assumes the duties of trademark and patent enforcement”. From a theoretical point of view, “monopoly” mainly occurs in the market economy, and the “welfare” produced by “intellectual property” also ultimately acts on the market economy and benefits the society. The reform of state institutions is an opportunity to combine “anti-monopoly” and “abuse of intellectual property” directly, which is convenient for theoretical research and practical operation.

### III. COMPREHENSIVE MANAGEMENT OF INTELLECTUAL PROPERTY AND MARKET FORMING A COMPREHENSIVE SUPERVISION MODEL

#### A. *The Relationship Between Abuse of Intellectual Property and Anti-monopoly*

1) *Intellectual property and anti-monopoly law are mutually restrictive:* At first sight, “intellectual property” and “monopoly” are not related that much. “Intellectual property”, as the result of intellectual achievements, is naturally linked to the “favorable influence of social development”, and hardly connected to “monopoly” directly. However, according to the nature of rights, “intellectual property” encourages people to carry out more innovative activities in the economic field by giving exclusive rights to oblige. Exclusive rights mean exclusion and exclusivity. And the exclusivity of intellectual property has a special nature different from ordinary property rights. Therefore, it is very possible for restricting competition by this exclusivity. As a concept in economic law, “monopoly” has a lot of manifestations in the market economy. Even with the development of society, the means and methods of realizing monopoly are changing with each passing day. Hence, it is possible to achieve monopoly by using the exclusivity of intellectual property. The conflict between intellectual property rights and anti-monopoly law is inherent in its nature. For example, in a technology transfer contract involving “patent or technical secrets”, the patentee definitely hope to set more restrictions or clauses to get more benefits from it. But according to the anti-monopoly law, these restrictions or clauses may be illegal.

2) *Intellectual property and anti-monopoly law are complementary:* The restrictive relationship between intellectual property and anti-monopoly law is based on their nature. But it may lead to a completely different or even opposite result to look their relationship with a different angle or another field. Practically, the benefits of intellectual property to the market economy are far greater than the impact of restricting competition. From the realistic purpose of setting up the two, intellectual property law is to improve the efficiency of enterprises and enhance the welfare of consumers through the incentive mechanism of innovation and invention, the anti-monopoly law through anti-monopoly and promotion of competition. Because only under the pressure of market competition, companies will lower prices, improve quality and carry out technological innovations [5]. Therefore, in order to stand out from the competition in the market, companies must constantly invent and innovate. Under this premise, the exclusivity of intellectual property can produce real social value. Thus, intellectual property and anti-monopoly law have no conflicts in their essence, but complement each other.

#### B. *Coordination Between Comprehensive Management of Intellectual Property and Market Supervision*

The intellectual property legal system is derived from the commodity economy and the market economy, and finally serves them. The comprehensive management of intellectual property, whether it is intellectual property administrative management or administrative enforcement, belongs to the law enforcement scope of intellectual property legal system. Therefore, it must face the market and commodity economy, and market economy, which is indivisible with market and commodity economy, and market economy. [6] Item 34 of the “Plan for Deepening the Reform of the Party and State Institutions” mentions: “the main duty of the State Market Supervision and Administration is to be responsible for comprehensive market supervision and administration, to uniformly register market entities and establish information disclosure and sharing mechanisms, and to organize comprehensive law enforcement of market supervision, and undertake anti-monopoly law enforcement, ...”. It can be seen that the anti-monopoly law enforcement is specifically emphasized, which reflects the state’s emphasis on anti-monopoly. Under this condition, the State Intellectual Property Office is also under the management of the State Market Supervision and Administration, which directly confronts the abuse of intellectual property rights and is a major step forward in putting intellectual property theory into action.

In dealing with the problem of abuse of intellectual property and anti-monopoly, someone think that it is necessary to start from the national legislative level, amending relevant laws or issuing special regulations or legal documents to regulate them. But it has been discussed about the legislation on the abuse of intellectual property above. Combined with the actual situation and the existing legislative system of our country, the legislative defects of the abuse of intellectual property in China do not have much impact on the whole field of intellectual property. Now the key problem is the enforcement of the law. As Article 55 of the “Anti-Monopoly Law”, a principle law, it clarifies the concepts of the “Anti-Monopoly Law” and the “Intellectual Property Law” and authorizes this task to the anti-monopoly executive agency [7].

### IV. CONCLUSION

The problem of abuse of intellectual property rights and anti-monopoly law has always been a matter of concern, because it directly affects the market economy and the commodity economy, but it has gradually become clear. It is very difficult to fully distinguish the boundaries between intellectual property rights and the issue of monopoly law. The most scientific approach now is to balance the relationship between the two to maximize profits.

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