

# Improvement of the Legislative Provisions of the Patent Pledge Financing in P2P Online Loan Platform

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**Abstract.** Patent pledge financing based on P2P network lending platform is an innovative way for small and medium-sized technological enterprises to transform knowledge capital into financial capital. Because the relevant laws and regulations are too rough, the operability is poor, and the limitation of the characteristics of the P2P network lending platform, the situation of patent pledge financing through the P2P network lending platform for small and medium-sized technological enterprises is not optimistic. In view of the problems existing in the legislation of patent pledge financing in P2P network lending platform in China, we should clarify the scope of the object of patent pledge financing and broaden the way to realize patent pledge.

**Keywords:** P2P net loan platform; Technology-based SMEs; Patent right; Pledge; Financing.

## 1. Introduction

In recent years, the development of P2P network lending, especially the development of patent pledge financing mode in P2P network lending platform, has played a huge role in promoting the financing of small and medium-sized technology-based enterprises and the development of market economy in China. However, due to the characteristics and drawbacks of the patent right as the targeted matter of pledge, the imperfections in the legislation. As a result, the success rate and effectiveness are not satisfactory. Perfecting the legislation of patent pledge financing in P2P network lending platform is of great significance to solve the financing difficulties of small and medium-sized technology-based enterprises .

## 2. The Legal Definition of the Patent Pledge Financing in P2P Online Loan Platform

To define is to give a concept to the target. Concepts are the logical starting point for judging and demonstrating problems, and are the necessary and indispensable tools for solving legal problems. To study patent pledge financing in P2P network lending platform, we should first define its basic concepts clearly.

### 2.1 The Meaning of P2P Net Loan and Patent Pledge Financing

P2P network lending refers to the business mode that the network credit company provides a platform for matching the equivalent lender of funds and the borrower of funds to borrow funds directly.

Patent pledge financing is a financing method that the debtor sets up a pledge guarantee with invention, utility model and design patents owned by the debtor or legally held by other people. When the creditor's right is not to be liquidated at the expiration of the term. The pledge can dispose the patents through discount, auction or sale and get payment in priority within the scope of the proceeds.

### 2.2 Characteristics of Patent Pledge Financing

In addition to the general characteristics of secured financing, patent pledge financing has its own characteristics as follows:

First of all, patent pledge financing is a kind of financing with usufruct guarantee. After the pledge of the patent right is established, the pledger can still continue to implement the patent. The reason is

that the patent right is a profitable economic value. On the other hand, if patent holder want to realize the economic value of patents, they must put patents into industrial application.

Secondly, the object of patent pledge financing is immaterial. As the object of patent pledge financing, intellectual achievement is a kind of spiritual wealth, manifesting as information with property value.

Thirdly, patent pledge financing has time and regional characteristics. Time refers to the fact that invention patents, utility models patents and design patents have a certain period of protection. The territoriality of patent pledge financing means that the patent right can only be produced according to the law of one country and can only be effective in that jurisdiction.

### **3. The Legislative Status and Problems of the Patent Pledge Financing in P2P Online Loan Platform**

#### **3.1 The Legislative Status of the Patent Pledge Financing in P2P Online Loan Platform**

In our country, the legislative provisions of patent pledge financing were first seen in the Guarantee Law of our country. Article 75 of the Guarantee Law stipulates that property rights in patent rights can be pledged. At the same time, Article 79 of the Guarantee Law stipulates that if the property right in the patent right is pledged, a written pledge contract shall be signed between the parties, and the pledge registration shall be carried out, and the registration shall be the effective requirement of the pledge contract. Article 223 and 227 of the Property Law of 2007 respectively stipulate the pledge of rights such as patents and their registration. Article 227 of the Property Law further perfects Article 79 of the Guarantee Law, which regards registration as the establishment requirement of the pledge right rather than the effective requirement of the pledge contrast. The provisions of relevant laws on patent pledge financing are also applicable to P2P network lending platform.

#### **3.2 The Legislative Defects of P2P Net Loan Platform in the Patent Pledge Financing**

Patent pledge financing based on P2P network lending platform is an innovative way for small and medium-sized technological enterprises to realize the transformation of intellectual capital into financial capital. However, in China, only in the "Guarantee Law" and "Property Law", there are some general provisions on patent pledge. There are still many uncertainties. It is difficult to provide operational guidance for the implementation of patent pledge financing in P2P online lending platform. Specifically, there are mainly several imperfect aspects:

First of all, the targeted matter's scope of patent pledge financing is not clear. China's "Guarantee Law" and "Property Law" have made it clear that the property right in patent right can be used as the subject of pledge, but they fail to make those problems clear such as what property rights in the patent right that can be pledged and what status of the patent rights that can be pledged.

Secondly, the rights and interests of the pledgee in the patent pledge financing are hard to be fully protected. Although article 216 of the Property Law stipulates stipulates the remedies for the interests of the pledgee, as a monopolistic intellectual property, there is not only a risk that the value of the patent right is obviously less, but also the risk that the pledged patent infringes upon the patents rights of others or that the patent right is declared invalid within the validity period. At this time, the rights and interests of the pledgee are affected. But there is no law on how to protect. This makes it more difficult to obtain financing by means of patent pledge through P2P network lending platform in practice.

### **4. Suggestions on Improving Legislative Provisions of the Patent Pledge Financing in P2P Online Loan Platform**

"The ideal of the legal state must be implemented at the specific institutional and technical levels." Patent pledge financing in P2P network lending platform involves not only many fine technical specifications, but also various value considerations that are difficult to decide. In view of the

shortcomings of patent pledge financing based on P2P network lending platform, it is necessary to further improve the legislative provisions of patent pledge financing in P2P network lending platform.

#### **4.1 Define the Targeted Matter's Scope of the Patent Pledge Financing**

First of all, it should be clear that the targeted matter of patent pledge financing includes the right of patent application. There are two main reasons. On the one hand, the pledgee may face risks in the future if the patent application right is classified as the subject of the pledge of the patent right, because it is uncertain that the applicant's patent right for invention, utility model or design is recognized by patent examination administration. But in fact, the invention, utility model and design which are granted patent rights may be revoked or invalidated due to infringement. On the other hand, the obligee knows the risks of the patent right in the applicant's invention, utility model and appearance design application, and both parties agree to take the patent application right as the pledge object.

Secondly, it should be clear that the subject matter of patent pledge financing does not include the signature right of inventor or designer. On the one hand, the right of signature is the right of the inventor or designer to express his identity. It is an important personal right of the inventor or designer, and it does not belong to property right; on the other hand, the right of signature is not transferable. As a personal right, Even if the right of patent application or patent right is transferred through the agreement of the parties, the transferee does not enjoy the right of signature.

Finally, it should be clear that the subject matter of patent pledge financing does not include the inventor or designer's right to remuneration. This is because, although the right of the inventor or designer to get remuneration appears to have property attribute on the surface, it is closely related to the person of the inventor or designer, which makes the right to get remuneration not transferable.

#### **4.2 Broadening the Way to Realize the Pledge of Patent Rights**

First, the parties concerned are allowed to determine the way to implement the pledge through consultation. Based on the principle of autonomy of will in civil law, the parties of the contract can reach agreement through negotiation, so as to determine the way to realize the pledge of patent right. At this time, the way to realize the pledge of patent right is not limited to the auction, sale and discount stipulated by law, but other ways can be set up. For example, when the creditor's rights are not liquidated at the expiration of the term, the pledgee can realize the pledge by leasing the pledged patent right and licensing the use of it.

Secondly, it stipulates that the patent right will be pledged together with the equipment for the implementation of patents. When setting up patent pledge financing in P2P network lending platform, both patent rights and equipments for the implementation of patents can be pledged to provide guarantee, which leads to the possibility that some potential purchasers may give up purchasing the pledged patents in the process of auction, sale or discount based on their strong technical nature, difficult implementation and high cost of putting them into use. If the patent right is pledged together with the equipment for the implementation of patents, it will increase the probability of realization of the patent right pledge in the P2P network lending platform.

### **5. Summary**

The development of patent pledge financing mode in P2P network lending platform, has played a huge role in promoting the financing of small and medium-sized technology-based enterprises and the development of market economy in China. we should clarify the scope of the object of patent pledge financing and broaden the way to realize patent pledge.

### **Acknowledgments**

This work was financially supported by Henan Intellectual Property Soft Science Research Project (Item number: 20180106041).

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