

Intellectual Property Protection and Cultural Inheritance of Folk Handicrafts

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Abstract: *Traditional handicrafts are an important part of China's intangible cultural heritage, but today's technological products have a serious impact on traditional handicrafts, causing them to face a certain crisis of survival. At the same time, due to the lack of clear and explicit laws as a basis, more and more intellectual property infringement problems faced by traditional handicrafts have ended in settlements. Although the current legal system can protect traditional handicrafts through administrative means, it still lacks private rights protection, which is not conducive to improving the motivation of traditional handicraftsmen, and thus hinders the development and inheritance of traditional handicrafts. In the current context of protecting traditional crafts by administrative means, this paper explores the use of the intellectual property system, and then protects traditional crafts to make up for the inadequacy of administrative law in protecting traditional crafts.*

Keywords: *Traditional Handicraft, Intangible Cultural Heritage, Suzhou Embroidery, Intellectual Property Rights, Legal Protection*

1. Introduction

1.1. Research Background

Intangible cultural heritage is the cultural soul, spiritual lifeblood and great wealth of a nation. The protection of intangible cultural heritage is conducive to the development of the cultural richness and sustainability of the whole society, and it also has an important role in economic development. As an important part of intangible cultural heritage, traditional handicrafts are also cultural treasures that have been preserved by the handing down of skills for generations. However, with the continuous socio-economic development, culture is increasingly permeating people's daily lives. Traditional handicrafts are receiving more and more attention, and various related commercial activities are potentially eroding the valuable traditional handicrafts. At the same time, some cases of infringement of traditional handicrafts occur from time to time, and the impact of this on the inheritance and development of Chinese traditional handicrafts cannot be overstated. Although China promulgated the Regulations on the Protection of Traditional Arts and Crafts in 1997, the intellectual property issues involved in the protection of traditional handicrafts have not been well resolved, especially the ambiguity of the original ownership of traditional handicrafts. Therefore, there is a controversy over what intellectual property rights system should be applied to traditional handicrafts. Some advocate the protection of their copyrights, while others advocate a special rights protection model. In the Law of the People's Republic of China on Intangible Cultural Heritage promulgated in 2011, it also includes traditional arts and crafts including traditional handicrafts, but the law is text-oriented and has little practicality, so it cannot play a good role in protection [1].

1.2. Research Significance

Traditional handicrafts are the fruits of wisdom created by specific masses in long-term practice, and they are one of the important components of China's intangible cultural heritage. In recent years, with the acceleration of economic globalization and modernization, many traditional handicrafts are on the verge of extinction and are facing a serious survival crisis. The survival crisis of traditional handicrafts can bring serious damage to the spiritual civilization of a country. At the same time, cases of intellectual property infringement of traditional handicrafts occur repeatedly, which is very unfavorable to the development and inheritance of traditional handicrafts in China. The problems faced by traditional handicrafts have become an urgent problem in today's society. From the above, we can

see that in order to ensure the healthy development of traditional handicrafts in China, it has become necessary for us to supplement and improve the protection measures for traditional handicrafts [2].

2. Concepts Related to Intellectual Property Protection of Traditional Handicrafts

2.1. Definition of Traditional Crafts

2.1.1. Definition of Traditional Handicrafts

In the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, traditional crafts are included in the definition of "intangible cultural heritage". Literally, traditional handicraft consists of "tradition," "hand," and "craft. The term "traditional" emphasizes that it has been passed down from generation to generation and from history to history. "Craft" emphasizes the process of processing and treating various materials to make works. The word "hand" emphasizes the process of processing by human beings in the production, which is different from the industrialized production process of modern art and echoes the word "tradition" better, which is a production skill passed down through generations. However, in today's linguistic environment, traditional handicrafts are not interpreted literally alone, but have a richer meaning. Many scholars have defined traditional handicrafts from different perspectives, the difference being that different disciplines have different emphases in their definitions. In today's domestic context, traditional crafts often encompass the products they are formed from, and it even extends to the methods of using the products, among other reasons, probably because of the strong correspondence between them, unlike modern crafts that can be applied to many different crafts and also to other places. Therefore, once traditional crafts are mentioned, traditional handicrafts often come to mind first, which makes traditional handicraft products the embodiment of traditional crafts [3].

2.1.2. Classification of Traditional Handicrafts

There are many traditional handicrafts, so it is impossible to list them all, but they can be divided into categories according to the criteria of process and material. According to the material, it can be divided into knitting craft, carving craft, embroidery craft and so on, and the various crafts can be classified again. For example, the carving process can be divided into shell carving, tooth carving, jade carving, coral carving, stone carving, root carving, bamboo carving, wood carving, copper carving, bone carving, brick carving and other categories according to the different materials.

2.2. Characteristics of Traditional Handicrafts

2.2.1. The Group Nature of Creation

Since most of the traditional crafts originate from the gathering areas of various ethnic groups or from the production life of individuals, traditional crafts can be developed. Therefore, most traditional handicrafts rely on the crystallization of group wisdom, and generations of people have passed them down through various ways, showing the characteristic of group nature. This characteristic is very different from the modern intellectual property system, because the group nature means that the rights of traditional handicrafts do not belong to any one individual. The group nature of traditional handicrafts is mainly reflected in the group nature of their creation process, and the group nature of their transmission [4].

2.2.2. Distinctive Locale

Each ethnic group has its own distinctive characteristics, which are closely related to the local human environment and natural landscape, thus forming a unique way of life, production and folk customs. This is exactly what is meant by the saying, "A place of water and a place of people". They are born here, inherited here, and developed here. Therefore, their regional characteristics are also extremely obvious. To a certain extent, these traditional handicrafts reflect the living habits and spiritual culture of the area, and it is the unique human environment that has led to a number of excellent cultural connotations, which is the embodiment of the "living" local culture.

2.2.3. Craftsmanship and Inheritance

Traditional handicrafts have been continuously optimized, and the skills have become more and more exquisite, and some of the "tricks" of quality handicrafts have been gradually mastered. These "tricks" gradually form a unique craft over time, which is similar to a technical lock, and even though

traditional crafts look simple, they can only be made well after a long period of study and practice. Whether young people take the time to learn the skills has also become one of the factors that make it difficult to pass on traditional handicrafts [5].

3. Theoretical Discussion on the Protection of Intellectual Property Rights of Traditional Handicrafts

3.1. Properties of Intellectual Property Rights of Traditional Handicrafts

3.1.1. Contents of Intellectual Property Rights of Traditional Handicrafts

The intellectual property system was established in order to incorporate the intellectual achievements of groups or individuals into the protection system of the legal system, grant them exclusive and exclusive rights for a certain period of time, and achieve the purpose of stimulating intellectual innovation and promoting cultural regeneration, and sustainable development through the sharing of intellectual resources, and reasonable distribution of benefits based on respect for the right holders. The main reason for the disagreement in folk art IPR legislation lies in who the real beneficiaries of the legislation are. The nexus of this divergence is defined between developed and developing countries, and the different positions resulting from this interest, then makes the resistance to the new type of IPR legislation come mainly from the international level. However, the relationship between the use and exploitation of traditional crafts as an exploitable knowledge resource is not limited to between countries, but widely exists between peoples and interest groups within countries [6].

3.1.2. Objects of Traditional Crafts

Considering the object of intellectual property protection, traditional handicrafts can be divided into tangible knowledge forms and intangible knowledge forms. Tangible knowledge forms are mainly tangible expressions of knowledge factors such as aesthetic ideas, spiritual connotations and design concepts, while intangible knowledge forms refer to handicraft techniques and the spiritual ideas and design concepts related to them. Through the provisions of Article 6 of China's Copyright Law, we can learn that to protect China's traditional handicrafts through the relevant system of the Copyright Law, the State Council needs to make separate provisions, but the Article has not issued relevant provisions as of now. According to the classification of this law, our traditional handicrafts should belong to fine art works, but as craft techniques they can be classified between fine art works and architectural works. This shows the ambiguity of traditional handicraft as an object of protection, which will lay the groundwork for the deviation of its protection in judicial practice in the future [7].

3.2. Patent Law Protection for Traditional Handicrafts

3.2.1. Patent Application for Traditional Handicrafts is Questionable

In reality, whether and how traditional handicrafts can be patented, and whether patents can provide protection for traditional handicrafts are all topics of current controversy.

3.2.2. Limitations of Patent System Protection for Traditional Handicrafts

3.2.2.1. Insufficient Inventiveness

One of the conditions for granting a patent under China's Patent Law is inventiveness, while traditional handicrafts are craft skills that have been slowly accumulated in people's daily lives and are not as efficient as scientific skill products in today's society, they are only traditional skills that people use to complete certain products by hand. From the aspect of inventiveness, traditional handicraft cannot meet the requirements of a patent [8].

3.2.2.2. Lack of Novelty

Traditional handicraft is a technology created by people in a specific region through generations. In the process of passing down the handicraft from generation to generation, the essence of the handicraft itself does not change except for the improvement of the sector, and the process of passing down the handicraft reflects the essence of the traditional handicraft. It can be seen that the traditional handicraft in the process of being passed down from generation to generation, it is relatively public in a specific region and a specific group of people, and its lack of novelty as required by a patent [9].

3.2.2.3. High Requirement of Protection Period

China's patent law limits the patent right to a certain period of time, and the patent will no longer be protected by the patent after the corresponding period. However, traditional handicrafts need a longer term of protection. The term stipulated in the patent law cannot meet the requirements of traditional handicrafts for the term of protection, and if the term stipulated in the patent law is used, this will be detrimental to the development of the protection of traditional handicrafts [10].

3.3. Associated Protection of the Patent System

Although there are many shortcomings in the protection of traditional handicrafts through the patent system, it does not mean that the patent system cannot protect traditional handicrafts. As long as the relevant requirements of the patent system are met, the inheritors can protect traditional crafts by applying for patents. The novelty and innovation required by the patent system can be interpreted in a broader way, so that they can be protected if the patent requirements are met. Traditional handicrafts are closed within a specific scope and are constantly evolving in the middle of the closed state, which shows that they are novel. Traditional handicraft is developed and innovated in a specific area through the unremitting efforts of a specific group of people, and then the traditional handicraft is passed down. It can be seen that in the process of developing and innovating traditional handicrafts, they then have the characteristics of innovation [11].

4. Trade Secret Protection of Traditional Handicrafts

4.1. Application of Trade Secret Protection

Trade secret protection is of great importance to traditional crafts, and often a tacit protection is formed in the field of traditional crafts, such as the grape often making process in Qing Dynasty, outsiders do not know how to make it. The vast majority of traditional handicrafts will pass on the skills in the form of secrets to the descendants who meet the internal conditions of the craft, which forms a strip of traditional handicraft trade secrets inheritance mode. Trade secrets have an important significance to the economic interests of enterprises, many old brands can achieve commercial success, in addition to its management capacity, it has a major factor of trade secrets. Traditional handicraft can rely on its reliance on local natural conditions according to its regional characteristics, so that it forms a natural secret protection system. For example, traditional handicrafts may have a certain dependence on factors such as water quality, soil and climate, and traditional handicrafts will cease to exist if they leave these dependence factors. It can be seen that even if people outside the specific area of traditional crafts acquire the technical methods of traditional crafts, they cannot obtain the technical results [12].

4.2. Problems of Traditional Handicraft Trade Secret Protection

Trade secret protection of traditional handicrafts is mainly reflected in the protection of some traditional old brands, but these old brands are only a small part of traditional handicrafts. Most of the traditional handicrafts have been known to the world through the mass media, and play an increasingly important role in life. It can be seen that if certain traditional crafts are protected through trade secrets, it will affect the production development of society as well as the degree of harmony.

5. Suggestions for Improving the Legal System for the Protection of Intellectual Property Rights of Traditional Handicrafts in China

5.1. Establish a Guiding Principle for the Protection of Intellectual Property Rights of Traditional Handicrafts in China

Generally speaking, China should take into account the current socio-economic development environment and the legal system environment, and conduct a more effective and active exploration of the relevant modes of protecting the intellectual property rights of traditional handicrafts. When we look at the world, whether it is the powerful countries with more outstanding economic conditions or the economically backward and weak regions of Asia, Africa and Latin America, all of them, without exception, put intellectual property rights of knowledge resources in a very important position, which are very active in expanding the cultural influence of their traditional resources in the world, thus

driving the sales of their traditional cultural products in the commercial competition, shaping the very national characteristics of international brands, and increase their own reference base in the world field of events. In the protection of intellectual property rights for traditional handicrafts, the balance of two interests must be properly handled. The first is the interests between the inheritors and users of traditional handicrafts, and how to make the two not harm each other. The second is the balance between the interests of the individual inheritor and the public sphere of society. In this regard, we must firmly protect traditional handicrafts from the beginning to the end, ultimately to protect the public interests of society. The status of traditional handicrafts is determined by the role they play in the process of commercial circulation and the commercial value they generate [13].

5.2. Improving the Existing Copyright System

The special nature of traditional handicraft means that its subject can only be a specific group of people, but hardly one or several people. The process of derivation, development of traditional handicraft involves the development and creation, sale, and use of the old products. Therefore, the protection of traditional handicrafts involves not only the original inheritors and current creators of the handicrafts, but also the disseminators and so on. Although the definition of the subject and object of traditional handicraft is more difficult than that of the rest of intellectual property rights, it still needs to be defined more clearly in order to be fully protected. In recent years, China has gradually realized the importance and necessity of refining the classification to people, and the list of intangible cultural heritage has been constantly updated as a result. At present, the main subjects of rights of traditional handicrafts are divided into two kinds, one is the subject of possession and the other is the inheritor. The subject of possession is the information provider of first-line technology. It is currently outside the scope of protection of copyright law. The inheritor generally refers to the person who has mastered a certain traditional handicraft skill and has been recognized by the relevant institutions, which is characterized by being more representative. Among the inheritors, they can be divided into the original craft parent inheritors and the creators derived from the original skills. For how to distinguish them, it can be based on the annually updated list of non-heritage, and the establishment of a self-certification system for the inheritors of traditional crafts, etc. For group achievements, China's copyright law may appropriately relax the restriction of originality and recognize the seniority achievements of collective creation [14].

5.3. Improving the Current Patent System

To improve the current patent system, we can start by lowering the examination standards, especially in terms of the innovativeness requirement, while simplifying the patent application process and expanding the accessibility of patent law protection. In the process of patent protection application, the examination of its novelty is an essential process, with which the existing already existing technology is currently compared. According to the explanation of the Examination Guide of the State Intellectual Property Office, the technical content in a secret state does not belong to prior art. This so-called secret status of course includes not only the situation bound by the terms or provisions of the formal confidentiality agreement, but also the state of confidentiality according to the tacit social agreement, customs and traditions. Based on the special development history of some traditional handicrafts, they are only passed on and developed with unique information symbols within the ethnic groups in their places of origin or regions of origin, and will not be known to the public unless they are specifically disseminated, and this part of traditional handicrafts is actually in a state of secrecy. For example, some old brands have certain internal inheritance conditions and secrecy systems, such as the rule of "passing on to male but not female", and only family inheritance or only master and apprentice inheritance. Therefore, when examining traditional handicraft applications for patents, the novelty criterion should be relaxed in consideration of their special characteristics, and traditional handicrafts that are limited to traditional communities or traditional groups should be regarded as confidential, which does not violate the principle of novelty, but of course the scope of traditional communities or traditional groups can be limited to a certain extent. In assessing the legitimacy of a patent, the relevance of disclosure is considered from the perspective of the IPR holder, and the inventive step (non-significance) is considered in the context of the traditional situation. This craft skill system and practitioners should be considered in the test for persons skilled in the technology [15]. The proposals of WIPO-IGC to omit the novelty examination and to simplify the application process, all these are worthy of inclusion in the consideration of improving the IPR protection system for traditional crafts in China.

6. Conclusion

Intangible cultural heritage as a heritage of human knowledge and culture, which is a precious cultural information resource in China. As the most vivid, representative and marketable part of the intangible cultural heritage, the legal protection of traditional handicrafts is not only a respect for the labor creators, but also a protection of China's cultural diversity, and it is an important measure to strengthen cultural self-confidence and promote traditional culture in China. However, due to non-negligible practical problems, there are still some limitations in our current protection work. In recent years, our government has introduced a number of administrative rules and regulations for the protection of intangible cultural heritage, such as traditional handicrafts, and increased the investigation of the inheritors of traditional handicraft culture. At the same time, it has eliminated the factors of ineffective protection of traditional handicrafts through the transformation and adjustment of the existing intellectual property rights system or institutional innovation. In addition, we should improve the legal protection system of traditional handicrafts and their superior concept "intangible cultural heritage", and then create a legal protection environment that is conducive to the inheritance and development of traditional handicrafts.

References

- [1] Tian Zhongxiang. *Research on the Protection of Intellectual Property Rights of Traditional Handicrafts* [D]. Graduate School of Chinese Academy of Social Sciences.
- [2] An Liuji. *On the Protection of Intellectual Property Rights of Traditional Handicrafts in Sichuan Province*[J]. *Journal of Literature and History*,2015, 000(004):54-58.
- [3] Xu Jin. *Legislative options and institutional improvement of intellectual property protection for traditional handicrafts*[J]. *Knowledge Economy*, 2014(20):2.
- [4] Yan YH, Li SHAITONG. *The path selection and institutional design of intellectual property protection for traditional handicrafts*[J]. *Hebei Jurisprudence*,2021(5):14.
- [5] Zhao Nong. *The preface to the study on intellectual property protection of traditional handicrafts* [J]. *Folk Art*,2019(2):6.
- [6] Li Dongfeng. *Dispelling the fog of intellectual property protection of traditional handicrafts--a reading of Research on Intellectual Property Protection of Traditional Handicrafts*[J]. *Journal of Suzhou College of Arts and Crafts Vocational Technology*, 2018(4):4.
- [7] Luo Desi. *On the legal protection of intellectual property rights of traditional handicrafts in China* [J]. *Art Science and Technology*, 2020,33(20):2.
- [8] Wang Min. *Study on the current situation of intellectual property protection of traditional handicrafts in Guangxi*[J]. *Knowledge Library*,2017(4):1.
- [9] Jiang Wei. *Research on the legal issues of intellectual property protection of traditional handicrafts in China*[D]. *Wuhan University of Engineering*,2018.
- [10] Zhang Feng Yue,Zhou Yi. *An analysis of the protection of intellectual property rights of traditional handicrafts in China*[J]. *Oriental Collection*,2018.
- [11] Geng Keming. *The role of government in the protection of intellectual property rights of traditional handicrafts in Suzhou*[D]. *Suzhou University*,2017.
- [12] Zhou Guobao, Bai Cuiwei, Zhu Hongxia. *Protection and inheritance of intangible cultural heritage of folk traditional handicrafts in southern Anhui*[J]. *Journal of Shandong Agricultural Engineering College*,2018.
- [13] Zhang Yan, Wei Xinyi. *Legal Protection of Traditional Crafts of Ethnic Minorities in Xiangxi under the Perspective of Intellectual Property Rights*[J]. *Time Finance*,2020.
- [14] Anonymous. "Beijing" carving: a study on the heritage protection and innovation development of traditional handicrafts of Beijing palace lanterns[M]. *Intellectual Property Press*, 2015.
- [15] Cao Zhongwen. *Intellectual property protection of traditional culinary arts* [J]. *Journal of Culinary Arts of Yangzhou University*,2020, 037(002):35-40.