



# Reform of Administrative Protection Mode of Intellectual Property Rights in China

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**Citation:** Qi, J., & Yu, Z. (2024). Reform of administrative protection mode of intellectual property rights in China. *China and WTO Review Journal*, 10(2), 119-131. <https://doi.org/10.52152/cwr.2024.10.2.08>

## ARTICLE INFO

Received: 29 Nov 2024

Accepted: 24 Dec 2024

## ABSTRACT

This study explores the reform of administrative protection models for intellectual property (IP) rights in China, focusing on the shift from private interest-oriented to public welfare-oriented approaches. The purpose of the study is to examine the role of public welfare-oriented administrative protection in promoting innovation-driven development and to analyze its implications for China's intellectual property legal framework. A qualitative research method was adopted, utilizing secondary data collected from journal articles, government reports, policy documents, and legal analyses. The findings reveal that while the private interest-oriented model emphasizes resolving disputes and protecting individual rights, it is insufficient to address China's broader national economic and innovation goals. In contrast, the public welfare-oriented model integrates IP protection with public interest strategies, such as government innovation support, patent navigation, and commercialization of IP assets. The study concludes that reforms are necessary to balance administrative and judicial protection while positioning IP as a strategic resource for economic development. However, the reliance on secondary data limits the study's scope, and future research should incorporate empirical methods to analyze IP protection effectiveness.

**Keywords:** Intellectual Property Rights, Public Welfare-oriented Administrative Protection, Private Interest-oriented Administrative Protection, Challenge, Enlightenment.

## INTRODUCTION

No matter between the practical departments of intellectual property law, or between the theoretical researchers of intellectual property law, the most persistent and intense controversy is not the concept of "administrative protection". Since the early 1980s, when the Patent Law of the Peoples Republic of China (hereinafter referred to as the Patent Law) was promulgated for the first time, "administrative protection" has frequently appeared in various legal norms and policy documents of intellectual property rights, which has become a problem that intellectual property legal workers cannot easily bypass (Cheng & Chu, 2017). But, penetration of the contemporary intellectual property law of 40 years, can find a confusing phenomenon, as long as the country in the field of intellectual property law implementation or implement every major reform, such as formulating and modifying the intellectual property law, exploring intellectual property court, the implementation of innovation driven development strategy, intellectual property legal workers will be "administrative protection" in a series of "debate" (Li, Xu, & Huang, 2022). In particular, on December 10, 2014, the State Council General Office forwarded intellectual property office and other units the in-depth implementation of the national intellectual property strategy action plan (2014 – 2020) notice, formally in the form of official documents "construction of intellectual property power" intellectual property development goals, intellectual property legal workers to "administrative protection" debate is more intense: administrative protection and judicial protection, who dominated? What is the scope of administrative protection? What is the rationality basis of administrative protection? Does administrative protection deviate from intellectual property rights as the attribute of private

rights? Some scholars who deeply hold the view that intellectual property law is the special law of civil law advocate the weakening and even the abolition of administrative protection (Zhang & Bruun, 2017). Some scholars who are well versed in the historical tradition of China's administrative power and the reality of intellectual property protection believe that administrative protection should not be weakened, but also needs to be built into an important system with Chinese characteristics. Some scholars treat administrative protection with transformative thinking, believing that the focus of administrative protection (Liu, 2015). The persistent and firm debate over administrative protection among intellectual property legal workers has influenced lawmakers or reformers have formulate intellectual property laws and policies, which also brought a lot of confusion to grass roots intellectual property practitioners. Thus it can be seen,

### **Study Objectives**

1. To explore the role of public welfare-oriented administrative protection in promoting innovation-driven development and its implications for China's intellectual property legal framework.
2. To analyze the evolution of administrative protection models in China's intellectual property system, focusing on private interest-oriented and public welfare-oriented approaches.

### **Significance of the Study**

This study is significant as it explores the shift in China's intellectual property protection from private interest to public welfare models. Understanding this transition provides valuable insights into how intellectual property can drive national innovation strategies and economic development. It also highlights the need for legal adjustments in China's intellectual property law, helping policymakers align with global standards while addressing local economic and political priorities.

## **LITERATURE REVIEW**

### **Two Major Modes of Intellectual Property Administrative Protection**

As a famous German scholar, Max Weber held that the general rule of mind type, which is formulated with different theoretical bases to build the administrative protection mode of intellectual property rights, there are different options for selection. For example, taking the administrative protection of "intellectual property rights" as the base point and taking different forms of protection methods as variables; based on the relationship between the public administrative subject and the administrative counterpart in the process of "administrative protection of intellectual property rights", different relationships are shown as variables; Wait. Based on the development stages of intellectual property administrative protection in China since the reform and opening up. The study of Dong, Zhu, and Hu (2015) stated that the indicators that can fully reflect the characteristics of intellectual property administrative protection in each stage as variables, that is, the leading goal, the basis, the function, the way, the object and the political philosophy of the "administrative protection of intellectual property." By examining the characteristics of these six indicators in different development stages, the author abstracts two modes of intellectual property administrative protection: administrative protection at stages of private interest orientation and public welfare orientation (Hou, Tang, Zhang, Hong, & Wang, 2023).

There are two main reasons why we chose the development stage of intellectual property administrative protection in China since the reform and opening up. First, according to the mainstream view of the intellectual property law circle, from the founding of new China to the reform and opening up, China had not really established a complete intellectual property system, let alone the administrative protection system. An important opportunity for the establishment of China's intellectual property administrative protection system is that after Deng Xiaopings visit to the United States in January 1979, China and the United States signed the Implementation Agreement on High-Energy Physics Cooperation and the Trade Agreement between China and the United States (Wang, 2020). In the process of signing the two documents, the US requested the inclusion of an "intellectual property protection clause" in the agreement. Although the Chinese representatives knew very little about the intellectual property legal system, they therefore promoted the awareness of the establishment of the intellectual property system. In December of the same year, the Third Plenary Session of the 11th CPC Central Committee was held, which opened the prelude to the overall intellectual property legal system construction, including the intellectual property administrative protection system (Zhao, 2018). Second, since the reform and opening up, China's intellectual property administrative protection has lasted for 40 years.

Six indicators to measure an administrative protection mode proposed above, we will compare and analyze the main characteristics of two types of intellectual property administrative protection modes.

### The Leading Goal of Administrative Protection

The leading goal of private interest-oriented administrative protection is to safeguard the property rights or personal rights of obligees according to the intellectual property law. For example, Article 37 of the Trademark Law of the Peoples Republic of China (hereinafter referred to as the Trademark Law), which was implemented in 1982, stipulates that trademark registrants enjoy the exclusive right to use registered trademarks or trademarks approved for registration and commodities approved for use (Munsrijan, 2022). If this right enjoyed by others is illegally infringed, then the administrative organ should take corresponding administrative measures to protect it according to the law. In this regard, Article 39 of the Law stipulates that the administrative Department for Industry and Commerce has the right to order the infringer to stop the infringement immediately for infringement of the exclusive right to use registered trademarks, and the administrative Department for Industry and Commerce may impose administrative fines for serious infringements (Salzman, 2004). This is a typical administrative protection to protect the private rights of trademark registrants.

Administrative protection for public welfare is the leading goal to protect and promote national and social interests of the object of intellectual property rights. For example, Article 1 of the Patent Law of the People's Republic of China (hereinafter referred to as the Patent Law) revised in 2008 stipulates that the Patent Law is one of the basic purposes of the patent law, to "promote scientific and technological progress" and economic and social development. As a system of patent law, administrative protection certainly needs to promote this legislative purpose, while scientific and technological progress and economic and social development naturally belong to national interests and social interests. In this regard, the more specific administrative protection methods can be analyzed by taking the national implementation of patent navigation project as an example (Barker, 2003). In April 2013, the State Intellectual Property Office issued the Notice on Implementing the Patent Navigation Pilot Project (Guozhi Fa Guan Zi [2013] No.27), officially launching the patent navigation pilot project. According to the provisions of the notice, the State Intellectual Property Office optimizes the patent creation of industries, encourages the coordinated application of patents, cultivates the development of patent operation formats, and improves the patent application service system through new administrative protection methods such as administrative guidance and administrative subsidies. Hence, the use of the patent system to enhance the ability of industrial innovation-driven development, speed up the adjustment of industrial structure, and improve the overall quality and competitiveness of the industry. It is undoubtedly the national and social interest to promote the upgrading of the country's overall industry. This patent navigation project implemented by the State Intellectual Property Office belongs to public welfare-oriented administrative protection.

### The Basis of Administrative Protection

The concept of "intellectual property rights" belonging to private rights is the foundation of private interest-oriented administrative protection. The Agreement on Trade-Related Aspects of Intellectual Property Rights declares in its preamble that intellectual property rights are private rights (Bell, 2002). The authoritative intellectual property law scholars in China explain it as follows: it is a private right, a private right and a private interest right. Intellectual property rights belong to private rights, which implies that state power, especially administrative power, should hold a negative position-unless there is a dispute between the parties to intellectual property rights that cannot be resolved by their own strength, and they voluntarily request the intervention of state administrative power, otherwise, administrative power should remain neutral. Specific to administrative protection, it contains at least two meanings: First, people have a distrustful attitude towards administrative protection and limit the scope of administrative protection as much as possible. As some scholars have pointed out, "sanctity of private rights" and "autonomy of private law", as the basic concepts of civil law, require the state not to arbitrarily intervene in the "protection of intellectual property rights". The second is to understand administrative protection in a very narrow sense, that is, to define it as "relief" (Zhu, 2007). Some early intellectual property law scholars in China understood administrative protection in the sense of "relief".

### The Protection of Administrative

The function of private interest-oriented administrative protection is mainly to solve disputes between intellectual property parties and investigate and deal with the illegal infringement of infringers. Article 60 of the Patent Law revised in 2008 stipulates that the administrative ruling of patent disputes between parties by the patent department is a typical private interest-oriented administrative protection. Paragraph 3 of Article 60 of the Trademark Law revised in 2013 stipulates that the administrative department for industry and commerce mediates the amount of compensation between the parties for infringement of the exclusive right to use trademarks, which also belongs to private interest-oriented administrative protection (Post, 2015). Disputes between parties to intellectual property rights are usually caused by one subject (infringer) infringing the other subject (intellectual property owner). The intellectual property administrative protection organ resolves disputes through administrative adjudication, administrative punishment and administrative mediation, investigates and

deals with the infringer's illegal infringement, and protects the legitimate rights of the infringed person. Some early intellectual property legal workers in China held this view. Private interest-oriented administrative protection limits its function to resolving disputes between parties to intellectual property rights and protecting the legitimate rights and interests of the infringed person afterwards (Chon, 2005). In fact, it is a natural extension of the concept that "intellectual property rights are private rights", and it is in the same strain as the viewpoint of understanding the administrative protection of knowledge in the sense of "relief".

#### Administrative Protection Methods

There are four main ways of private benefit oriented administrative protection: one, administrative punishment. For example, Article 39 of the Trademark Law in 1982 stipulates that the administrative department for industry and commerce may impose a fine on the right to exclusive use of a registered trademark. The second is the administrative adjudication. For example, Article 77 of the Detailed Rules for the Implementation of the Patent Law in 1992 stipulates that the patent administration authority has the right to dispute the inventor or designer and his employer over whether the invention-creation is a service invention-creation and whether it makes a patent application for the service invention-creation (Kieff, 2003).

The mode of action of public welfare-oriented administrative protection is similar to that of private interest-oriented administrative protection in form, and there are other types of modes of action. The so-called similarity in form means that public welfare-oriented administrative protection also has administrative punishment, administrative coercion, administrative inspection and other functions in form, but in essence it is different from these functions in private interest-oriented administrative protection. For example, the former is embodied in major illegal acts such as active implementation according to authority, repeated infringement, mass infringement, patent counterfeiting of major projects in the field of people's livelihood, etc (Rojek, David, & Halbert, 2015). The latter is embodied in passivity, that is, the administrative protection organ implements it according to the application or report of the parties concerned, and mainly aims at the matters that the infringed person has been infringed upon. In 2009, 2011, 2013 and 2015, the intellectual property administrative protection organs organized nationwide special administrative law enforcement actions named "Thunderstorm", "Skynet", "Escort" and "Lightning", which made extensive use of administrative functions such as administrative inspection, administrative investigation and administrative punishment in public welfare-oriented administrative protection (Xian, 2015). If analyzed in terms of types, these administrative functions in public welfare-oriented administrative protection can be called administrative law enforcement administrative protection.

#### Objects of Administrative Protection

In order to correctly distinguish the differences between these two types of administrative protection in the protection objects, it is necessary to explain what the protection objects are. This requires the introduction of a basic concept, the intellectual property life cycle. Intellectual property life cycle is a figurative concept to analyze intellectual property from the perspective of intellectual property value. It usually includes three stages: rights confirmation, rights distribution and rights appreciation (Hennessey, 2009). The object of administrative protection of intellectual property rights is one or several stages in the life cycle of intellectual property rights that the administrative protection organs point to when exercising public power.

The object of private interest-oriented administrative protection is the right in the distribution stage of intellectual property life cycle. For example, some scholars believe that the administrative protection of "intellectual property rights" is the use of administrative means by intellectual property administrative agencies to crack down on illegal acts that infringe intellectual property rights and safeguard the legitimate interests of obligees. The so-called "cracking down on illegal acts of infringement of intellectual property rights" here mainly refers to the stage of rights distribution of "intellectual property rights", which is embodied in "relief". Article 46 of the Copyright Law of 1990 stipulates that the copyright administrative department shall confiscate illegal gains, impose fines and other administrative penalties on infringement, which is the protection of the rights distribution stage (Dorji, 2009). The object of public welfare-oriented administrative protection is the rights of all stages in the life cycle of "intellectual property rights", and the focus begins to shift to the rights of value-added stage.

#### Political Philosophy Concept of Administrative Protection

General Secretary Xi Jinping once brilliantly pointed out "There is politics in the rule of law, and there is no rule of law divorced from politics". British administrative law scholars also said: "Behind every administrative law theory, there is a national theory". Therefore, public law is just a kind of political discourse. From the analysis of the ownership of departmental law, the administrative protection of intellectual property actually belongs to the scope of administrative law (Chen, 2016). Therefore, in a certain sense, the administrative protection of intellectual property is a kind of political discourse and a kind of political thing. The so-called political philosophy, aims to understand the nature of political things and the proper or good political order. The essence of political

things, is not neutrality, but to make claims about people's obedience, loyalty, decision, or judgment. Without measuring their claims by good or just standards, he does not understand the true face of those claims as political things. To make sound judgments, one must know the true criteria. The mission of political philosophy is to try to acquire the true knowledge of these standards. It can be seen that, in short, to explore administrative protection from the perspective of political philosophy, it is necessary to provide essential knowledge for people to judge whether administrative protection is legitimate (Xi, 2017a). The political philosophy concept of administrative protection is the basic concept that provides its legitimacy. Furthermore, it is the most basic political concept that can provide legitimacy for private benefit-oriented administrative protection and public welfare-oriented administrative protection. By analyzing the contents of the leading goal, foundation, function, mode, object and political philosophy of administrative protection of intellectual property rights, we can find out the characteristics and differences between private interest-oriented administrative protection and public welfare-oriented administrative protection (H. Sun, 2022). This can be represented by Table 1. However, it should be pointed out that private interest-oriented administrative protection and public welfare-oriented administrative protection are two theoretical models to understand the administrative protection of intellectual property rights in China. They are not mutually exclusive and diametrically opposed.

The logical starting point of all political theories or state theories is to solve the relationship between the state and the individual: "The prerequisite for the emergence of all political thoughts is to be aware of the opposition between the individual and the state. The task of every political thinker is to reconcile and eliminate the opposition that he is aware of its power. Not aware of this opposition, all the political problems involve the power base of the country and the legal source of the problem will lose their meaning. Without harmonizing this antagonism, none of these problems can be solved. "The author believes that the political philosophy concept of private benefit-oriented administrative protection is a negative state view, while the political philosophy concept of public welfare-oriented administrative protection is a positive state view. The core of the negative national view is: to respect the choice of the market subject, the market subject best judge is their own affairs and interests; the executive function is to maintain the market order; the executive power to simply execute the law; the executive authority has little discretion. The core of the positive national view is: under the grand goal, the administration acts on the market subject with its will and strength, the market subject is the tool to achieve the specific goal; the administration not only implements the law but also makes public policy; and the administrative authority enjoys a wide discretion.

Table 1. Two Modes of Administrative Protection of Intellectual Property Rights

	<b>Private interest-oriented model</b>	<b>Public welfare-oriented model</b>
Leading goal of administrative protection	Safeguarding the Legal Rights of Intellectual Property Owners	Safeguarding and promoting national and social interests related to intellectual property rights.
Foundation of administrative protection	Intellectual property rights belong to private rights	Intellectual property is an important strategic resource for development and a key element of competitiveness
Administrative protection	Resolve disputes, investigate and deal with illegal and infringing acts	Accelerate the construction of a power in intellectual property rights
Administrative protection methods	Administrative punishment, administrative enforcement, administrative adjudication, administrative mediation, etc	Administrative guidance, administrative subsidies, administrative support, administrative information disclosure, administrative early warning, administrative punishment, administrative coercion, etc
Administrative protection object	Rights allocation stage in the intellectual property life cycle	All stages of the intellectual property life cycle, especially the appreciation of rights
Administrative protection of the concept of political philosophy	Negative national view	Positive national view

## METHODOLOGY

### Research Method

This study utilizes a qualitative research method to examine the evolution and challenges of intellectual property (IP) administrative protection in China. The qualitative approach is chosen because it allows for an in-depth analysis of the theoretical frameworks, legislative developments, and scholarly debates surrounding IP protection models. Through a qualitative lens, the study examines the shifts between private interest-oriented and public welfare-oriented administrative protection. This method is justified as it facilitates the interpretation of complex legal and administrative changes within China's intellectual property landscape, using interpretive analysis of secondary sources.

### Research Design

The research design of this study is based on the use of secondary sources, such as journal articles, books, policy reports, and government documents. This approach is justified by the nature of the study, which involves reviewing and analyzing existing academic and legislative literature on intellectual property rights. Secondary sources provide comprehensive insights and existing analyses that are essential for understanding both the historical development and contemporary challenges of IP administrative protection in China.

### Data Collection

The study collects secondary data from a variety of credible academic sources, including peer-reviewed journals, books, dissertations, government policy documents, and legal reports. These sources are accessed through specialized legal and academic databases, ensuring a comprehensive and accurate data set. The selection of sources is based on the inclusion and exclusion criteria outlined in Table 2, ensuring that only relevant and reliable materials are included in the study.

Table 2. Inclusion and Exclusion Criteria

Criteria	Inclusion	Exclusion
Time Range	2000–2023	Publications before 2000
Subject	Intellectual property rights, administrative protection, legal frameworks, innovation strategies in China	Studies unrelated to intellectual property or China
Type of Sources	Peer-reviewed journal articles, academic books, dissertations, government reports	Non-academic sources, blog posts, non-peer-reviewed articles
Language	English, Chinese	Non-English, Non-Chinese publications
Geographical Focus	China's intellectual property protection, East Asian legal and administrative systems	Studies unrelated to China or East Asia
Database Scope	Scholarly databases (such as Westlaw, HeinOnline, LexisNexis, SSRN, CNKI, WIPO Lex)	Unverified databases or commercial websites

Note: The inclusion criteria focus on ensuring that the data is up-to-date, scholarly, and related to the intellectual property administrative protection context in China.

### Data Analysis

The collected data is analyzed through thematic analysis, where key themes and patterns within the scholarly literature are identified and examined. This approach helps to interpret the shifts between private interest-oriented and public welfare-oriented administrative protection in China's intellectual property system. Themes such as historical development, legal challenges, innovation strategies, and policy implications are explored. The analysis also involves a comparative approach, contrasting the characteristics and functions of the two models of IP protection and assessing their implications for China's future legal frameworks.

### Ethical Standards

This study adheres to the highest ethical standards by ensuring the proper citation and acknowledgement of all secondary sources used. Only publicly available data from academic databases and government sources are included, and no human subjects are involved, thus avoiding the need for formal ethical clearance. The study also ensures objectivity in the interpretation of data, avoiding bias in the analysis of intellectual property laws and administrative practices.

## RESULTS AND DISCUSSION

### The Rational Basis of Public Welfare-oriented Administrative Protection

Just as the rise of private interest-oriented administrative protection in China is by no means accidental, the formation and development of public welfare-oriented administrative protection in China also has a strong rational foundation.

#### Public Welfare-oriented Administrative Protection is an Important Content of Intellectual Property Strategy

From the historical perspective, one of the landmark events of public welfare-oriented administrative protection is the decision of the Outline of the National Intellectual Property Strategy issued by The State Council in 2008, which decided to implement the national intellectual property strategy." This is a major strategic deployment made by the CPC Central Committee and The State Council in the new era of reform and opening up in light of the new situation at home and abroad (Hu et al., 2017). It is a major event bearing on the future of the country and the future of the nation." The national intellectual property strategy defines one of the five strategic priorities of intellectual property protection, and defines the administrative protection of intellectual property from the public welfare oriented aspects, such as cultivating a batch of internationally famous brands; guiding and supporting the market subject to creating and apply intellectual property; it can promote the enterprise to become the subject of creation and application of intellectual property; promote the intellectual property, industrialization, and commercialization of independent innovation achievements; guide the enterprise to strengthen the intellectual property, transfer, licensing, pledge and so, realize the market value of the intellectual property, and effectively curb the infringement. An important watershed for the development of public welfare-oriented administrative protection is that in which the State Council issued several Opinions on The opportunity for the deepening and sustainable development of public welfare-oriented administrative protection in 2018 (Mok, Chan, & Wen, 2021). Overall Evaluation. The National Intellectual Property Strategy was assessed based on the Ten-year Assessment of the implementation of the National Intellectual Property Strategy, and it was suggested that the state formulate the Outline of the "Strategy of Strengthening Intellectual Property for 2021 to 2035" an outline that upgrades the 2008 intellectual property strategy outline and the 2015 opinions on building a strong intellectual property. It can be expected that the Strategy for strengthening intellectual property rights will make further detailed placement in the system of administrative protection in the public welfare dimension. The national intellectual property laws and policies, the basic program of the intellectual property system, intellectual property strategy are the basic starting point of intellectual property affairs, thinking intellectual property enterprise though soul, to promote the healthy development of intellectual property enterprise, is about intellectual property arrangement and strategic layout integrity.

"Public Welfare-oriented Administrative Protection is a Basic Tool for Implementing Innovation-driven Development under the New Normal of the Economy"

The new normal of economic development is a major judgment made by General Secretary Xi Jinping on the new trend of China's economic development since the 18th CPC National Congress. The transformation of the driving force of China's economic development is the basic connotation of the new normal of economic development. It means that the driving force of Chinas economic development should shift from relying mainly on resources and low-cost labor and other factors to innovation. Innovation-driven development, from the dynamic sense, "innovation" is reflected in the construction of an innovative country, "development" is reflected in the construction of an economic power, and "drive" will inevitably raise the issue of intellectual property rights and its protection, especially the public welfare oriented administrative protection (Dosi & Stiglitz, 2014). This is because intellectual property rights and their protection are an effective way to activate the driving force of innovation-driven development and ensure the transformation of knowledge products into real productive forces. The driving force of innovation-driven development includes no more than two aspects, one is government-driven innovation, that is, the government (directly through state-owned enterprises and state-owned high-tech research institutions), develops knowledge products, similar to manned spaceflight and Change moon landing; the other is market-driven innovation, that is, enterprises (mainly private enterprises, such as Huawei, ZTE, etc.) play a leading position in the research and development of knowledge products. In this sense, intellectual property creates an artificial scarcity in order to form a benign intellectual property supply market. Second, a new market mechanism (Maskus, 2012). The market mechanism of "intellectual property rights" refers to the licensing and transfer transaction rules designed and formulated by people according to the intangible characteristics of intellectual property rights. Through this rule, knowledge products can be smoothly transferred, transformed and industrialized, thus generating benefits and promoting economic development. Thus, intellectual property is the link or bridge between innovation and the market.

However, in order to make this link or bridge function normally, the intellectual property rights protection is

indispensable, especially the public welfare-oriented administrative protection. This is because, on the one hand, the property rights mechanism and the market mechanism of intellectual property rights themselves are the result of the government's main use of administrative protection methods. For example, through the protection method of examination and authorization, the administrative organ grants the legal innovation subject to monopolize certain intellectual property rights within a certain period of time, thus forming a property right mechanism of intellectual property rights (Kuo, 2012). For another example, administrative organs ensure that the intellectual property rights enjoyed by the innovation subject and the innovation subject are not illegally infringed by others, and maintain the order of intellectual property rights. For another example, the administrative organs establish the transaction and transfer rules of intellectual property, and establish the market mechanism of intellectual property by means of filing, licensing and guidance. These protection methods are usually public welfare-oriented administrative protection. On the other hand, public welfare oriented administrative protection is the most important incentive way to promote the property rights of intellectual property mechanisms and market mechanisms to play extraordinary functions. Establishing and maintaining the property right mechanism and the market mechanism of intellectual property rights is the minimum protection responsibility that the government should implement. However, in a new round of technological revolution and industry momentum, countries around the world will intellectual property to improve knowledge innovation ability, form the core competitiveness, the important means of realizing the leapfrog development background? The intellectual property rights mechanism and market mechanism, especially under the background of China's economic development into the new normal, and should take the initiative to take guidance, boost, supporters, service, nurturing role, realize extraordinary development of intellectual property rights, catch up with the western intellectual property power represented by the United States (Xi, 2017b). This is exactly the mission of public welfare-oriented administrative protection. As some scholars have pointed out, the idea comes from the possibility that the government can act actively to realize the value and the ideal. In practice, China has implemented the overall implementation of the intellectual property strategy outline, the opinions on strengthening the intellectual property country, and the promotion plan of strengthening the intellectual property country. In addition, these classes of public welfare-oriented administrative protection occupy an extremely important position in the opinions. For example, in the case of 2018, intellectual property power propulsion plan for a total of six aspects, 109 construction tasks among them, constraining tasks related to intellectual property protection is as many as 31, constraining task of intellectual property protection is 40, and most of the task is related to the public welfare oriented administrative protection (Hrdy, 2019). The State Intellectual Property Office is responsible for speeding up the construction and layout of the intellectual property protection center, deepening the work system of intellectual property reporting, complaint and rights protection assistance; promoting the construction of intellectual property notarization service platform, and formulating the norms and business rules of electronic evidence custody services for notarial intellectual property. Therefore, public welfare-oriented administrative protection has become the basic work for the Chinese government to implement innovation-driven development under the new normal of the economy.

Public Welfare-oriented Administrative Protection Meets the Needs of the Reform of "Delegating power, Streamlining Regulation and Providing Services" in the Field of Intellectual Property Rights

The reform of "streamlining administration" in the field of intellectual property is an important part of deepening the reform of the Chinese government in the new era. In his report to the 19th CPC National Congress, General Secretary Xi Jinping stressed the need to "transform government functions, deepen and streamline administration and delegate power, innovate the ways of supervision, enhance the government's credibility and executive capacity, and build a service-oriented government that the people are satisfied with (Chan, 2022). As a result, this has provided a way to deepen the reform of delegating power, delegating regulation and delivering services in the field of intellectual property. The intent and requirements of the reform of 'delegating power, deleting power and providing services in the field of intellectual property can be better met by public welfare administration oriented administrative protection.

### **Public Welfare-oriented Administrative Protection can Create a Favorable International and Convenient Business Environment for IP-intensive Enterprises**

Creating a sound business environment for enterprises is the basic purpose of China's reform of delegating power, streamlining regulation and service. As intangible assets, intellectual property plays a decisive role in the development of innovative enterprises. According to the World Bank development of international business environment indicators, directly related to intellectual property on property registration convenience (intellectual property approval authorization), credit convenience (intellectual property pledge financing), and a few investor protection (intellectual property rights after illegal infringement protection). The transnational trade convenience (intellectual property is the international trade rules), the execution of the contract of judicial convenience (involving intellectual property transfer and transaction) and bankruptcy convenience (after bankruptcy



intellectual property disposal), and other indicators (Dimitrov, 2009)). How to create a good international and convenient business environment for intellectual property-intensive enterprises based on these indicators, public welfare-oriented administrative protection is undoubtedly one of the most important means. In fact, if we examine the measures taken to optimize the business environment in the field of intellectual property in recent years, it is not difficult to find that the state mostly adopts the public welfare-oriented administrative protection mode. For example, The 2018 Plan for Further Implementing the “National Intellectual Property Strategy” and Accelerating the Construction of a Strong “Intellectual Property Country stipulates that the State Intellectual Property Office”, the “Ministry of Commerce”, the State-owned Assets “Supervision and Administration” Commission and other organizations are responsible (Qi & Yu, 2024). It also promotes the establishment of an overseas intellectual property protection assistance service fund; establishes a platform for an overseas intellectual property issues and case information, and promotes the formation of an overseas intellectual property rights protection assistance service network. Thus, to guide the central government enterprises to jointly carry out the overseas patent distribution work, strengthen the IP strategic layout and risk prevention and control of major overseas market countries and regions; We will continue to promote the construction of the overseas intellectual property information platform "Zhinan needle" network and other protection tasks. These public welfare-oriented protection measures implemented by the state administrative organs mainly focus on creating a good international environment for enterprises and enhancing their international competitiveness. Alternately, using 2017 as another example, the National Intellectual Property Strategy will move fast to help build a strong intellectual property country. The Promotion Plan stipulates that administrative organs such as the State Intellectual Property Office are responsible for: trying out patent re-examination and invalidation priority examination, exploring the implementation of short-cycle case examination mode, and exploring the establishment of a centralized examination mechanism involving a series of applications for re-examination cases. Vigorously promote online trademark applications, and expand online applications from opening only to trademark agencies to all applicants. Another example is that on July 31, 2018, the State “Intellectual Property Office” issued the Work Plan for “Intellectual Property Protection of the Internet Plus”, which stipulates that the purpose of administrative protection is to enhance the governance capacity in the field of intellectual property (A. Y. Sun, 2001). It also stipulates that the State Intellectual Property Office and other subjects are responsible for studying and putting forward the work plan of "Internet plus" intellectual property protection, organizing its implementation and promotion, and strengthening guidance and supervision. To Guide the pilot work and timely summarize and popularize the pilot experience; Establish and improve the operation mechanism; Organize the construction of a national technical support system and strengthen coordination with relevant big data center construction work; Promote the wide application of "Internet plus" in relevant law enforcement guidance work (H. Sun, 2022). It can be seen that the main purpose of these protective measures implemented by state administrative agencies is to create a convenient business environment for enterprises and reduce the cost of enterprises.

#### Public Welfare-oriented Administrative Protection can Meet the Needs of Regulatory Innovation of Intellectual Property Rights of Market Entities

Innovation in regulatory methods and implementing fair, just and efficient supervision are the basic content of the reform of streamlining regulation and services. In the era of knowledge economy, intellectual property rights have become an important issue of market subjects. Market entities may not only abuse intellectual property, but also illegally infringe the intellectual property of other market players, such as patent cockroaches and copyright cockroaches. How to supervise such illegal acts of market subjects is the inherent responsibility of “intellectual property administrative protection organs.” From the practical analysis, the subject of intellectual property administrative protection has broken through the negative supervision under the private benefit-oriented administrative protection, and has implemented active supervision in the height of creating a fair and just business environment for enterprises (Zhao, 2018). Most of their supervision methods belong to public welfare-oriented administrative protection methods, such as credit supervision, cross-regional law enforcement, special actions, Internet + administrative protection, etc. For example, the 2018 Implementation of the National Intellectual Property Strategy stipulates that the State Intellectual Property Office, the National Copyright Administration and other administrative organs are responsible for deepening the special actions of "escort" and "thunder", severely cracking down on patent infringement and violations in key areas (Ashley, 2022). The key links such as exhibitions and e-commerce; and deepening the tasks of joint patent law enforcement in Beijing-Tianjin-Hebei region, Yangtze River Economic Belt, Pearl River Delta and other regions. It is worth mentioning that the plan stipulates the credit regulation, the intentional infringement, long-term infringement, repeated infringement, serious infringement, counterfeit patent trademark, malicious squatting, hoarding trademark, implementation of intellectual property hijacking, abuse of intellectual property, abuse of intellectual property rights into the credit system, prevent behavior violations again, reduce the cost of market main body, improve

social public welfare.

### **The Enlightenment of Public Welfare-oriented Administrative Protection to the Legal Construction of Intellectual Property Rights**

The public oriented strong rise of administrative protection is the country to adapt to the new era of intellectual property power construction of long-term planning, is the necessity of building an innovative country, it will impact the intellectual property law in the status of the legal system of existing ideas (Reichman, 2009). Up to a certain extent, changing the basic structure of the intellectual property law of intellectual property brings profound influence on the rule of law construction, making the intellectual property law show its own characteristics.

The Balance that Intellectual Property law is the Special Law of Civil Law and the View that Intellectual Property is Dominated by Judicial Protection

What position does the intellectual property law play in the overall legal system of a country and whether it belongs to an independent legal department or other legal departments is a question that positions the intellectual property law. Simply, the question here is whether intellectual property is mainly protected by judicial protection or administrative protection. This is the view, in this regard, that intellectual property law is the special law of civil law, and that intellectual property is under judicial protection, therefore its administration should be weakened (Sell, 2003). The basic reasons are: The intellectual property rights are private rights, intellectual property rights are rights protected by civil code, and intellectual property rights have been stipulated in China's basic civil laws. It is not difficult to find that the first of these three reasons is that intellectual property is a private right. Since intellectual property is a private right, it should be mainly protected by civil legal system; since intellectual property is a private right, the disputes between intellectual property parties are civil disputes and are mainly solved through civil litigation. However, the research of Wolfhard (1991) has shown that the concept that intellectual property is a private right is actually a kind of "import", which is stipulated in the preamble of the Trade-related "Intellectual Property Agreement" led by Western countries represented by the United States. It embodies the experience of intellectual property law in the early Western developed countries: "Taking the spirit of private law as the basis of the construction of the legal system, so as to achieve a high degree of agreement between the concept of private rights and the private law system". However, since the beginning of the new century, this seemingly sacred and unchangeable concept has been loosened in the Western developed countries. For example, in a 2002 report, for example, the UK Intellectual Property Council declared that, whatever for intellectual property, we had better see it as a means of public policy, granted to individuals or institutions (Hargreaves, 2011). Economic privileges to achieve greater public interests and these privileges are only means to achieve goals, not goals in themselves. The public welfare-oriented administrative protection is based on the concept that "intellectual property is a strategic resource of the country", which has been widely recognized by Chinese officials, and then constructs its own system. Obviously, "intellectual property is a strategic resource of the country" and "intellectual property is a private right" are two concepts that hold opposite positions on the attributes of intellectual property-although they can coexist in intellectual property. The former focuses on the attributes of intellectual property from the national perspective, while the latter focuses on the attributes of intellectual property from the private subject level. When we design the intellectual property protection system based on the concept that "intellectual property is a private right", the civil protection system must dominate, while the administrative protection is in an auxiliary position, and "protection" is the core of the whole "intellectual property" system. Hence, it is understandable to treat the intellectual property law as a special law of civil law (Al-Eliwi, 2013). However, if we build a huge administrative protection system of intellectual property based on the concept that "intellectual property is a strategic resource of the country", it seems that we can no longer simply regard "intellectual property law" as the law of civil law. On the contrary, the public law norms of intellectual property law, especially the administrative law norms, will be greatly increased, and the intellectual property law will add more elements of administrative law. At the same time, the status of administrative protection will be greatly enhanced, and even there will be a trend that administrative protection is in a dominant position. This does not mean that emphasis on the role of administrative protection of the intellectual property rights would necessarily replace judicial protection. Finality, authority and professionalism characterise judicial protection of intellectual property rights, and flexibility, initiative and rapidity characterize administrative protection. The ideal choice is to make these two protection methods complement each other, instead of replacing the other with one way.

Necessary to Deepen the Research on the Intellectual Property Administrative Legal System

In essence, the transformation process from private benefit oriented administrative protection to public welfare oriented administrative protection is actually the expansion process of public administrative power. Under private interest-oriented administrative protection, the administrative law is formed mainly based on the

protection of intellectual property rights of intellectual property rights, which is the main object of command and obedience. China's three major intellectual property laws have stipulated (Guan, 2009). However, with the rise of public welfare oriented administrative protection, the expansion of the functions of intellectual property administrative protection organs, and the increasing diversification and complexity of intellectual property administrative relations, the current intellectual property administrative law is no longer the reality. The author believes that the new administrative law needs to be constructed around the leading goal and basic role of public welfare-oriented administrative protection. At present, we need to standardize the following seven issues (Chon, 2005).

## CONCLUSION

The study on the reform of administrative protection of intellectual property rights (IPR) in China highlights two distinctive models private interest-oriented administrative protection and public welfare-oriented administrative protection. These models represent different approaches and underlying philosophies in managing and protecting intellectual property in China. Over time, the shift from a private interest-oriented model, which primarily focuses on resolving disputes and safeguarding private rights, to a public welfare-oriented model, which integrates intellectual property into national development and innovation strategies, has become increasingly significant.

The private interest-oriented protection model emphasizes the protection of individual or corporate intellectual property owners' rights, often relying on mechanisms like administrative penalties, adjudication, and mediation. However, this model has shown limitations in explaining the evolving role of public administrative powers and fails to address the broader public interest aspects of intellectual property protection. Its scope is often limited to dispute resolution and post-infringement interventions, which are insufficient for addressing the complex realities of modern intellectual property landscapes.

In contrast, the public welfare-oriented model embraces the strategic importance of intellectual property as a driver of innovation-driven development, which is crucial for China's economic transition under the "new normal." This model expands the scope of administrative protection to include proactive measures, such as patent navigation projects, administrative guidance, and government support for intellectual property commercialization and innovation. The emphasis on safeguarding both national and social interests aligns with China's broader economic goals, positioning intellectual property as a key resource in global competitiveness.

Furthermore, the political philosophy underlying these models is key to understanding their implementation. While the private interest model aligns with a negative state view, advocating limited state intervention, the public welfare model is rooted in a positive state view, where the government actively supports and promotes intellectual property as a public good. This paradigm shift is reflected in China's ongoing intellectual property strategies, which stress the need for a balanced approach, integrating judicial and administrative protections.

In conclusion, the evolution towards a public welfare-oriented administrative protection model reflects China's strategic vision of intellectual property as a national resource for development. It also presents significant implications for the legal structure of intellectual property law, which will require adjustments to accommodate the growing role of administrative protection in shaping China's intellectual property landscape.

## LIMITATIONS

This study is limited by its reliance on secondary sources, which may not fully capture the latest developments in China's intellectual property reforms. Additionally, the study focuses primarily on administrative protection models, potentially overlooking other aspects of intellectual property enforcement, such as judicial measures. Furthermore, the analysis is based on available literature in English and Chinese, which might limit the scope of understanding, compared to a broader multilingual investigation of global intellectual property protection trends.

## ACKNOWLEDGEMENTS

Research on the Modernization of Industrial Intellectual Property Risk Management under the Overall National Security Concept (21&ZD203)

Major Project of the National Social Science Foundation

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#### ETHICAL DECLARATION

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**Conflict of interest:** No declaration required. **Financing:** No reporting required. **Peer review:** Double anonymous peer review.