Issues in the Space Cooperation

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The international cooperation in the space sci-tech development is becoming more prevalent among the big space countries and great powers. During the process of the cooperation we gradually found that the legal issue is one of the obstacles which may block the prosperous progress of the international cooperation in the space sci-tech region.

An expert several decades ago said that 19th century is the times of individual sci-tech research. The 1st half of the 20th century is the times of enterprises' sci-tech research. The 2nd half of the 20th century is the times of governments' sci-tech research and as well we came into an international sci-tech research era after the 1990. [1]As we know that 21st century is the information 、biotechnology and space-tech century——especially the space sci-tech century. We nearly use the most advanced technology in the rocket、satellite、space staion 、space shuttle and so on---all the apparatuses relevant with the space or outerspace research.

Since the 1st man-made object was dispatched into the space by the former USSR in 1957 the competition in such field

[1] Zhao Zhenjiang: 《the Sci-tech Law》,Beijing Univ.press,1991 edition,p424.

has been going like a raging fire—strainly and intensely .At the same time people got to know that they couldn't solve all the difficulties 、overcome all the embarassments when they do their job in the space sci-tech study no matter what they are mighty or puny, strong or weak. And so people naturally started to ponder over and practise the international cooperation.As it remained very fresh in our memory that USA and the former USSR did some successful cooperations in the space research even in the "cold war"period when they were in the hot arms race in 1970s—1980s.They've provided a good example for us to continue the same way in promoting the space technology.

1. the importance of IPR terms in the contract

The space technology is an aggregate of the hi-tech, it includes the material, communication, telemechanics, photoelectricity,aerodynamics, molecular-biology, bio-iatrology and so on.We may try to imagine that the sci-tech research is certainly a sort of complicated brainwork which will produce the intelligent achivements as a result. However ,the intelligent achievements have a close relation with the intellectual property right (hereafter "IPR") law and system,especially in the high-tech field. If we don't resolve the problems of IPR we can hardly do anything to go on the further study in the international

envirement when we entered the 1990s[2] .As usual people deal with the international sci-tech cooperation through the agreement, pact, alliance, bargain, contract,etc. Before the different countries cooperate in the space technology they must also sign the agreements----international technology contracts----in which the IPR ownership and the going shares are the essential articles without that the particitants won't approve signing them.

How to study out the articles about the IPR in the contract is one of the important and uneasy jobs.It takes time and expends the braincells very much! The achivements of the different countries' researchers during the international space cooperation, maybe, are outstanding ones. In my opinion, some international conventions, agreements concerning IPR may help us to cope with part of them smoothly such as Paris Convention, TRIPs etc.But what about the others? We have to do with them through contracts—international technological contracts. The national(inner) and international laws will all play role in this field. Here the principles and systems of the

[2] since the end of 1970s we started the reform and open to the world policy in China, we gradually came back to the big family of the world.But it was very strange for us that the new systems , rules,new conventions,treaties we weren't familiar with them. For instance we did some sci-tech cooperation with USA whose representatives insisted in adding the IPR items in the agreements.We met the same situations in the cooperations with other developed countries. We had to(!) make our IPR laws—trademark law, patent law, copyright law, etc.—in 1982,1984 and 1990,which were revised separately in 2000 and 2001 before we were accepted as a member of WTO.It means that our IPR protection laws almost were made under the pressure of the powers.

international private law may exert function. This is the one side we have to pay attention to.The other side we ought to notice is the ascertained something in an contract, agreement, the stipulated terms or conditions.How about the doing with the stipulations, the promises? The parties of the agreements must sit down and have a concrete negotiation about the terms and conditions.

It depends on the different situations in the space cooperation. However, the different contracts have the different terms.To make a difference between them is very ingenious and bright.

According to the contract law of P.R.C. we have 4 kinds of technology contracts, namely they are technology developing contract, technology transfering contract, technology consulting contract and technology servising contract.

As for our topic about the IPR,all the abovementioned 4 contracts have relation with the IPR but the technology developing contract is the most protrudent one among them.Because we rely on the technology developing contract to obtain the new technology.Before the development demeanour begins we'd better to decide the IPR owning or/and sharing in the contract .Otherwise the contradiction and conflict will trail

as a disgusting and troublesome shadow that will destroy even "raze the contract to the ground".

For the sake of happening of the sad result, to give a serious-minded schedule for the IPR terms arrangement in the contract/agreement in advance is very important.I remembered that several year ago a boss once consulted me about a piece of contract .The boss is one of my classmates in high school.He signed a technology developing contract racily with one of his friends--a boss of another company, they had business some years.—but his friend put a request in the process of the enforcement that he hoped to own the IPR of the coming technology and he might give some more profit as a quid pro quo. My classmate didn't know what to do with it because they didn't write any words about the IPR terms in the contract.I suggested that he would go to confer with the boss on the revisement of the contract. My classmate gave me a phonecall 3 days later and told me that they refered to the contract and parted on bad terms .The contract was put into a terrible dilemma. Their many-year friendship was in the napooed edge.A poor guy!

This is a reversed example in the flesh and blood,which explained us we must think much of the IPR issues during the

negotiation about the technology contract.

The international space cooperation agreements generally run on the international relationship between the agreement countries.There is no bagatelle in the international relationship.That is why people always spend so much time and stamina to consult the articles, terms of the contract/agreement, talk,talk,talk,ask for instructions and after many formalities the contracts/agreements were approved to sign.

The international space cooperation agreements usually touch upon so much heavy outlay. Once the contract was curtly signed and enforced the loss would be very huge, tremendous.This is we discuss it from the economic angle of view.

2. How to enact the IPR terms in the contract

We have discussed the importance of IPR terms in the above part of this essay. And now we'll go on the next important item,viz how to think of and decide the IPR terms in the international space cooperation contract/agreement.

According to the article 324 (the contract law of P.R. C,hereafter: contract law)"The contents of a technology cont ract shall be agreed upon by the parties, and shall

contain the following clauses in general: ……

(6) ownership of technological achievements and method of sharing proceeds;

……

Where a technology contract involves patents, the title of the invention or creation, the patent applicant and the patentee, the date and number of application, the patent nu mber as well as the valid time period of patent rights shall be indicated. ”

The Article 329 of the contract law prescribes:“ A tec hnology contract which monopolizes the technology or imp edes the technological progress, or which infringes upon the technological achievement of others shall be null and void. ”The article 330 of the contract law prescrib es: “A technology development contract refers to a contract concluded between the parties for purpose of conducting r esearch in and development of new technologies, new prod ucts, new

processes and new materials as well as their systems. Technology development contracts include commissioned development contracts and cooperative development contracts. A technology development contract shall be in writen form. "

The articles 339—341 prescribe: "With respect to inventions and creations achieved in the performance of a commissioned development, the right to apply for a patent belongs to the party that undertakes the research and deve lopment, except as otherwise agreed upon by the parties. Where the party that undertakes the research and developm ent is granted a patent right, the commissioning party may exploit the patent for free.

Where the party undertaking the research and develop ment transfers the right to apply for a patent, the commissi oning party shall have the right to priority in acquiring suc h right on equal conditions.

With respect to inventions and creations in cooperativ e development, the right to apply for a patent shall be join

tly owned by the parties who participated in the cooperativ e development, except as otherwise agreed upon by the par ties. Where one party transfers its part of the jointly owne d right to apply for a patent, the other party or parties ma y have the right to priority in acquiring such right on equa l conditions.

Where one party to the cooperative development contr act declares that it renounces its part of the shared right to apply for a patent, the other party may apply for it alone or the other parties may apply for it jointly. Where a pat ent is granted to the applicant, the party that renounced its right to apply for a patent may exploit the patent for free. Where one party to a cooperative development contract do es not agree to apply for a patent, the other party or parti es may not apply for it.

The right to use or to transfer the know-how achieve d in the commissioned development or cooperative develop ment, and the method of distributing the proceeds derived shall be agreed upon by the parties in the contract. In the absence of such agreement or in case of ambiguity of such agreement, nor can it be determined according to the prov

isions of Article 61 of this law, either party has the right to use and transfer it. However, the party undertaking the research and development under a commissioned development contract may not transfer the result of the research and development to a third party before delivering them to the commissioning party. "

The abovementioned prescripts of the contract law clue on that we can determine the IPR terms in the international space cooperation warranting the rules of the contract law—the articles refer to the technology development contract.The parties may determine the terms on the bases of their negotiation, of course ,but the stipulation shall not go against the law.

We have also to notice the principle of remaining public interests as it is one of the important principles in the international private law when we ponder over the contents of the international space cooperation contract/agreement,that principle was given in the <<General Rules of the Civil Law of the P.R.C.>>,too.

For the Chinese party of the international space cooperation contract/agreement you must obey the other relevant laws, regulations such as <<Keeping the National Secrets Law of

P.R.C>>, <<the Management Statute of the technology import-export of P.R.C.>> etc.

I may assure that the future of the international space cooperation is bright and the road is zigzag at the same time because of the differences in national situation, policy, religion, economy, culture……Let's do sth.together for the peaceful use of the outer space and for the realization of the harmonization of the world.

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