

中国科技创新知识产权政策

Intellectual Property Policies in Scientific and Technical Innovation

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2012.03.05

摘要：林新副司长介绍了中国在科技创新中的知识产权政策。她指出科技创新与知识产权密不可分，中国为科技创新中的知识产权积极提供有力的政策支持，并详细介绍了中国在此方面所做的努力，如强化科技创新的知识产权导向、鼓励科技人员转化技术成果等。最后，针对目前情况，提出了知识产权工作的改进建议。

Abstract: Ms. LIN Xin introduced Chinese IP policies for scientific and technological innovation. She pointed out that S&T innovation and IP are indispensable to each other and the Chinese government has been providing strong policy support to IP in S&T innovation. She then elaborated China's efforts in this respect such as enhancing IP orientation in S&T innovation and encouraging S&T personnel to develop and transform scientific achievements. Lastly, based on the status quo, Ms. LIN put forward a few suggestions to improve the IP management in China.

科技创新与知识产权的关系

S&T innovation and IP

科技创新与知识产权密不可分

S&T innovation and IP are indispensable to each other

- 科技创新是知识产权的源泉

S&T innovation is the source of IP

- 知识产权是科技创新的重要目标

IP is an important target of S&T innovation

科技创新与知识产权的关系

S&T innovation and IP

知识产权制度的作用 Functions of IP system:

- 保护人类智力劳动成果

Protect the fruit of man's intellectual work

- 促进公众对智力成果的利用

Encourage the public to exploit the achievements of man's intellectual work

权利人和使用者的利益平衡，推动科技、经济和社会进步

→ **Strike a balance between the interests of patentees and those of users, and promote scientific, economical and social progress**

中国对能源科技创新的支持

China's support to the innovation of energy technology

国家中长期科学和技术发展规划纲要（2006-2020年）

National Medium and Long-term Program for Science and Technology Development (2006-2020)

- **重点领域和优先主题：能源（工业节能，煤的清洁高效开发利用、可再生能源低成本规模化开发利用）交通运输业（低能耗与新能源汽车）城镇化与城市发展（建筑节能与绿色建筑）**
- **Key areas and priority themes: energy (industrial energy saving, clean and efficient use of coal, low-cost and large-scale exploitation of renewable energy), transportation industry (vehicles of low energy consumption and new energy vehicles), urbanization and urban development (building energy efficiency and green building)**

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National Medium and Long-term Program for Science and Technology Development (2006-2020)

- 前沿技术：先进能源技术（氢能及燃料电池技术，分布式供能技术）
- Cutting-edge technology: advanced energy technology (hydrogen battery and fuel cell, distributed power generation)
- 基础研究：能源可持续发展中的关键科学问题
- Basic research: key issues in sustainable energy development
- 重大专项：大型油气田及煤层气开发，大型先进压水堆及高温气冷堆核电站
- Major special projects: large-scale oil-gas field and coalbed methane, large-scale advanced pressurized water reactor and high-temperature gas-cooled reactor

科技创新知识产权政策

IP policies in S&T innovation

- 《中长期科技规划纲要》：

- National Medium and Long-term Program for Science and Technology Development**

- 强化科技人员和科技管理人员的知识产权意识，推动企业、科研院所、高等院校重视和加强知识产权管理

- Enhance IP awareness of scientific and technical personnel and administrators, and encourage enterprises, research institutions and colleges to enhance IP management

- 应用研究，以获得自主知识产权为评价重点

- Applied research focuses on indigenous IP

科技创新知识产权政策

IP policies in S&T innovation

■ 《中长期科技规划纲要》：

National Medium and Long-term Program for Science and Technology Development

- 创新型国家指标：本国人发明专利年度授权量世界前5位

Indicators for innovation-oriented country: annual patent licensing by natives rank top 5 in the world

- 实施知识产权战略，将知识产权管理纳入科技管理全过程

Implement IP strategies and integrate IP management into the process of science and technology management

科技创新知识产权政策

IP policies in S&T innovation

- 《国家知识产权战略纲要》：知识产权创造、运用、保护和管理

The National Intellectual Property Strategy Compendium : creation, exploitation, protection and management of IP

科技创新知识产权政策

IP policies in S&T innovation

- 《科学技术进步法》第二十条、二十一条

Article 20 and Article 21 of *Law of the People's Republic of China on Science and Technology Progress*

- 加强科技计划知识产权管理

Reinforce IP management in S&T programs

- 《关于国家科研项目研究成果知识产权管理的若干规定》

- *Provisions on Intellectual Property Management of Research Achievements in National Science and Research Programs*

- 《国家科技计划知识产权管理办法》

- *Administrative Measures on Intellectual Property Management in National Science and Technology Plans*

- 《中外科技合作中保护知识产权管理规定》 *Administrative Provisions on the Protection of Intellectual Property in Science and Technology Cooperation*

科技创新知识产权政策

IP policies in S&T innovation

- 鼓励成果转化和技术转让
- Encourage transformation of achievements and technology transfer
 - 1996年 《促进科技成果转化法》
 - In 1996, *Law of the PRC on Promoting the Transformation of Scientific and Technological Achievements*

 - 1999年 《关于促进科技成果转化的若干规定》
 - In 1999, *Provisions on Promoting the Transformation of Scientific and Technological Achievements*

科技创新知识产权政策

IP policies in S&T innovation

1. 强化科技创新的知识产权导向

Enhance IP orientation in S&T innovation

2. 调整科技成果知识产权归属

Adjust IP ownership of scientific and technological achievements

3. 重大专项和科技计划成果的推广应用

Popularize and apply achievements from major special projects and S&T programs

4. 鼓励和规范技术交易

Encourage and standardize technical transactions

5. 鼓励科技人员发明创造和转化技术

Encourage S&T personnel to develop and transform scientific research achievements

科技创新知识产权政策

IP policies in S&T innovation

1. 强化科技创新的知识产权导向

Enhance IP orientation in S&T innovation

- “十五” 开始实施专利战略
- Started to implement patent strategies from the Tenth Five-year Plan
- 改革科技奖励制度，发明专利等知识产权指标纳入国家技术发明奖评价指标体系
- Reform of S&T incentive system. IP indicators including patent of inventions are taken into the indicator system of National Award for Technological Invention

科技创新知识产权政策

IP policies in S&T innovation

1. 强化科技创新的知识产权导向

Enhance IP orientation in S&T innovation

- 应用类科技计划把获得自主知识产权作为实施目标和评价重点
- Application-based S&T program takes independent IP as the target of implementation and the key point for evaluation
- 各项科研计划管理制度和项目合同中均明确知识产权管理内容
- IP management should be specified in the management system of all S&T programs and project contracts

科技创新知识产权政策

IP policies in S&T innovation

2. 调整科技计划知识产权归属

Adjust IP ownership of S&T achievements

- 国家掌握知识产权：国家安全、利益和重大公共利益
- IP owned by the country: national security, national interests and major public interests
- 授权项目承担者依法取得
- Authorized to the project contractor

国家保留无偿实施或许可他人有偿、无偿实施

The country reserves the right of free exploitation or the right of granting free or paid exploitation to others

- 在合理期限内没有实施
- No exploitation within a reasonable time
- 为了国家安全、国家利益和重大社会公共利益
- For national security, national interests and major public interests

科技创新知识产权政策

IP policies in S&T innovation

2. 调整科技计划知识产权归属

Adjust IP ownership of S&T achievements

- 承担单位的管理和保护义务:
- Management and protection obligation on the part of project contractors:
 - 首先在境内使用
 - Domestic exploitation first
 - 一般应当采取非独占许可的方式
 - Non-exclusive licensing in most cases
 - 实施情况年度报告
 - Annual report of implementation progress

科技创新知识产权政策

IP policies in S&T innovation

3. 重大专项和科技计划成果的推广应用

Apply the achievements from major special projects and S&T programs

- 知识产权信息共享 IP information sharing

- 保护知识产权的前提下广泛传播
- Spread widely on the condition that IP is protected

- 重大专项许可使用义务

Licensing obligations of major special projects

专项产生和购买的知识产权，各项目（课题）单位应当首先保证其它项目（课题）责任单位为了专项实施目的的使用。

With regard to IP created and purchased in special projects, the organization that undertakes the project should guarantee IP exploitation for other responsible organizations for the implementation purpose of special projects.

科技创新知识产权政策

IP policies in S&T innovation

3. 重大专项和科技计划成果的推广应用

Apply the achievements from major special projects and S&T programs

- 牵头组织单位可指定推广
- **Leading organizations can decide the approach**
 - 为了国家重大工程建设的需要
 - for major national projects
 - 对产业发展具有共性、关键作用
 - if the IP is pivotal to certain industrial development
 - 为了维护公共健康需要
 - for safeguarding public health
 - 对国家利益、公共利益和国家安全具有重大影响
 - if the IP is influential to national interests, public interests and national security

科技创新知识产权政策

IP policies in S&T innovation

4. 鼓励和规范技术交易

Promote and standardize technology transactions

- 技术合同法律规定
- Legal provisions on technology contracts
- 技术转让免征所得税、营业税
- Technology transfer enjoys exemption from income tax and business tax
- 鼓励高新技术入股的
- Encouraging technology-based shares
- 技术交易市场
- Technology trading market

2011年全国认定登记的技术合同256428项，成交技术合同总金额4764亿元

In 2011, 256,428 registered technology contracts in China, with transaction value of RMB 476.4 billion.

科技创新知识产权政策

IP policies in S&T innovation

5. 鼓励科技人员转化科技成果

Encourage S&T personnel to transform scientific achievements

- 1996年 《促进科技成果转化法》
- *Law of the PRC on Promoting the Transformation of Scientific and Technological Achievements in 1996*

科技创新知识产权政策

IP policies in S&T innovation

5. 鼓励科技人员转化科技成果

Encourage S&T personnel to transform S&T achievements

- 奖励发明人和应用科技成果有贡献人员

Reward inventors and all contributors to applied S&T achievements

- 允许科技人员与单位协议转化职务科技成果

Allow S&T personnel to transform S&T achievements made in his position under the agreement between the researcher and the organization

问题 Problems:

- 大学和科研机构知识产权保护动力不足
- Lack of impetus in IP protection in unversities and research institutions
- 创新主体知识产权管理制度不健全
- Lack of sound IP management system for innovators
- 缺乏专业化的知识产权管理人才
- Lack of IP management professionals
- 管理经验不足
- Inadequate management experience
- 缺乏高水平的知识产权服务机构
- Lack of high-level IP service agencies

下一步工作考虑

Plan for the work follow-up

- 完善科技管理中的知识产权政策
- Improve IP policies in S&T management
- 健全重大专项和科技计划知识产权工作体系
- Improve IP working system for major special projects and S&T programs
- 加强知识产权培训和服务
- Strengthen IP training and service
- 推动大学、科研院所知识产权和技术转移体系建设
- Promote the establishment of IP and technology transfer system in colleges and research institutions

知识产权工作建议

Suggestions for IP-related work

- 提高意识

- Enhance awareness

- 制定知识产权战略方案

- Formulate IP strategic plans

与企业研发、采购、生产、营销、资产、并购等结合

Integrate with R&D, purchase, production, marketing, assets and merger and acquisition of enterprises

- 建立知识产权工作体系：

- Establish IP working system

- 组织管理体系：机构，专职人员，相关人员知识产权职责
- Management system: institutions, professional staff, IP obligations of related personnel
- 经费保障：课题经费和专门经费
- Fund guarantee: research fund and specialized fund

知识产权工作建议

Suggestions for IP-related work

- 制定知识产权管理制度：
- Lay down IP management system
- 落实知识产权工作内容：
- Implement IP-related work:
 - 科技情报搜集、分析和技术、知识产权数据库
 - Collection and analysis of S&T information, technology and IP databases
 - 技术管理措施：保密措施，论文发表审查等
 - Technical management measures: confidentiality measures, review and examination on published papers
 - 人才培养和知识产权培训
 - Personnel training and IP training

Thank you!

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