

Original Paper

Legal Application Rules and Improvement of Cross-border Intellectual Property Infringement

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Abstract

With the deepening of globalization, cross-border intellectual property infringement acts occur frequently, and the demand for resolving such disputes is rising steadily. Article 50 of the Law of the People's Republic of China on the Application of Laws to Foreign-related Civil Relations provides a normative path for the legal application in such cases. However, this provision has gaps in the jurisprudential interpretation of the "place where protection is claimed" and the introduced principle of party autonomy. In judicial practice, there are cases where Chinese law is directly applied without invoking conflict rules, and even the concept of "the law of the place where protection is claimed" is confused with "the lex fori", "the lex loci delicti" and other concepts. The determination of the "place where protection is claimed" needs further standardization and clarification. Meanwhile, judges should correctly understand and apply conflict rules in the trial process, and select the applicable law in combination with specific case facts, so as to effectively protect the legitimate rights and interests of the parties.

Keywords

cross-border intellectual property infringement, law of the place where protection is claimed, principle of party autonomy, principle of the most significant relationship

1. Introduction

The contradiction between the territorial nature of intellectual property and the international demand for intellectual property protection is a persistent topic in the field of foreign-related civil and commercial law. When an infringement act crosses national borders, determining the tort liability in accordance with the law of which country is not only related to the realization of the parties' rights and interests, but also directly affects the extraterritorial recognition and enforcement of judicial judgments. Article 50 of the Law on the Application of Laws to Foreign-related Civil Relations of the People's

Republic of China (hereinafter referred to as the Law on the Application of Laws) clearly stipulates: “The liability for infringement of intellectual property rights shall be governed by the law of the place where protection is claimed, and the parties may also agree to apply the lex fori after the occurrence of the infringing act.” This provision constructs a dual application rule with the “law of the place where protection is claimed” as the main body and the parties’ agreement to choose the “lex fori” as the supplement, providing a basic legal application guide for cross-border intellectual property infringement cases.

However, in judicial practice, the application of this provision has not achieved the normative effect preset by the legislation, but instead presents many application disorders. First, as the core connecting factor, the “place where protection is claimed” lacks clear definition at the legislative and judicial interpretation levels, leading to inconsistent determination standards in judicial decisions and even confusion with connecting factors such as the forum and the place of infringement. Second, the applicable boundary of the limited principle of party autonomy is vague, and there is a lack of review on the time, scope and effect of the parties’ choice of law in judicial practice, resulting in the abuse and misapplication of the rules. Third, a large number of judicial documents ignore the mandatory obligation to invoke conflict rules, fail to analyze and reason on the application of law, and directly apply Chinese law, making the choice-of-law guiding function of conflict rules ineffective. These problems are not only related to the justice of individual cases, but also affect the judicial credibility of China’s foreign-related intellectual property and the stable expectation of international civil and commercial exchanges.

Based on this, centering on Article 50 of the Law on the Application of Laws, and combining with the empirical analysis of judicial decisions in the past five years, this paper systematically sorts out the practical dilemmas of the legal application rules for cross-border intellectual property infringement, and explores the improvement path of China’s legal application rules for cross-border intellectual property infringement from the two dimensions of legislative clarification and judicial optimization.

2. Basic Theories of Legal Application for Cross-border Intellectual Property Infringement

2.1 Concept Definition and Legal Characteristics of Cross-border Intellectual Property Infringement

The in-depth advancement of economic globalization has accelerated the cross-border flow and commercial value transformation of intellectual property rights. Cross-border technological exchanges, cultural trade and brand cooperation have become increasingly frequent, and the demand for cross-border protection of intellectual property rights has continued to rise. Cross-border intellectual property infringement refers to acts involving foreign-related factors that infringe upon the exclusive intellectual property rights enjoyed by natural persons, legal persons or unincorporated organizations in accordance with the law based on intellectual achievements. Its objects cover traditional intellectual property types such as patent rights, copyrights, trademark rights, trade secrets and new types of intellectual property objects. In accordance with the judicial rules of China’s foreign-related civil trial,

the so-called “foreign-related factors” include three types: foreign-related subject, foreign-related object and foreign-related legal facts, that is, one or more parties to the infringement legal relationship are foreign subjects, the object of rights is located abroad, or the implementation of the infringing act and the occurrence of damage consequences cross national borders.

Territoriality is the inherent core attribute of intellectual property rights. Its essence is that the creation of rights, the scope of effect and the boundary of protection of intellectual property rights are all based on the laws of the country that grants the rights. Except as otherwise agreed in international treaties, no country has a legal obligation to protect the intellectual property rights of other countries. In the traditional private international law theory, the strict territoriality of intellectual property rights was considered to exclude the possibility of legal conflicts, and no special legal application rules for cross-border intellectual property infringement were formed. However, with the development of the digital economy and globalization, the territorial nature of intellectual property rights is facing fundamental challenges: on the one hand, the cross-border utilization of intellectual property rights has become the norm, and the exercise of rights and the implementation of infringement acts are naturally transnational; on the other hand, the number of cross-border intellectual property infringement disputes has surged, and there are significant differences in the protection standards, scope of rights and infringement determination rules of intellectual property legislation among countries, making the legal conflict and choice of applicable law in cross-border intellectual property infringement an unavoidable issue in judicial practice. Combining the normative connotation and practical patterns, cross-border intellectual property infringement has the following core legal characteristics:

First, the transnational nature of the act. This is the core formal feature of cross-border intellectual property infringement and the premise for the emergence of legal conflicts. Transnationality means that there is one or more elements closely linked to foreign legal regions in the infringement legal relationship, which is specifically manifested in the place of implementation of the infringing act and the place of occurrence of damage consequences belonging to different countries, or the production, sales and circulation of infringing products crossing national borders, or the subjects of rights belonging to different legal regions. Under the background of the digital economy, the borderless nature of the Internet has made the transnational characteristics of cross-border intellectual property infringement more prominent. Acts such as infringement of the right of information network communication and trademark infringement in cross-border e-commerce can often be implemented in one country and cause damage consequences in multiple countries, further increasing the difficulty of determining the transnational nature of the infringing act.

Second, the conflict of legal application. The strict territoriality of intellectual property rights determines that there are essential differences in the legislative setting of the scope of rights, infringement determination standards and damage compensation rules for intellectual property rights among countries. The transnational nature of infringement acts makes the same infringement act may be evaluated by the laws of multiple legal regions at the same time, thus resulting in conflicts in legal

application. The traditional private international law theory once denied the legal conflict in the field of intellectual property rights, but with the development of the internationalization of intellectual property protection, it has become a common practice for countries to regulate foreign-related intellectual property legal relations through conflict rules, and the resolution of legal conflicts has also become the core institutional goal of the legal application rules for cross-border intellectual property infringement. Third, the territoriality of the effect of judgments. The judgment results of cross-border intellectual property infringement disputes shall, in principle, have legal effect only within the territory of the forum state, and cannot be naturally recognized and enforced by other countries except as otherwise agreed in international treaties or bilateral judicial assistance agreements. This feature determines that the legal application of cross-border intellectual property infringement is not only related to the judgment result of individual cases, but also directly affects whether the parties' rights can obtain substantive relief in the target legal region, and also puts forward higher requirements for the accuracy of the court's application of conflict rules.

2.2 Dual Rule System for Legal Application of Cross-border Intellectual Property Infringement

China's Law on the Application of Laws stipulates the legal application rules of intellectual property rights in a special chapter, among which Article 50 constructs a dual application rule system for the liability of cross-border intellectual property infringement, that is, taking the law of the place where protection is claimed as the general principle and the limited party autonomy of the parties agreeing to choose the *lex fori* as an exception supplement. Together, they constitute the core norm of China's legal application for cross-border intellectual property infringement.

2.2.1 General Application Principle of the Law of the Place Where Protection is Claimed

The law of the place where protection is claimed is the mainstream rule for the legal application of cross-border intellectual property infringement worldwide, and its core jurisprudential basis lies in the territorial principle of intellectual property rights. Article 8 of the Rome II Regulation on the Law Applicable to Non-Contractual Obligations of the European Union clearly stipulates that non-contractual obligations arising from intellectual property infringement shall be governed by the law of the place where protection is claimed, forming a normative response with China's legislation.

The law of the place where protection is claimed refers to the law of the country where the right holder seeks protection for his intellectual property rights, which is essentially the law of the place where the intellectual property rights are granted, that is, the law of the country where the intellectual property rights claimed by the right holder originate. The core value of this connecting factor is that it conforms to the essential territorial characteristics of intellectual property rights, ensures that the scope of intellectual property rights, infringement determination standards are consistent with the legal basis for the creation of rights, and is also compatible with the national treatment principle established by the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works.

In judicial practice, the application of the law of the place where protection is claimed faces two dilemmas: first, the lack of clear norms for the determination standard of the “place where protection is claimed”, which is easy to be confused with the *lex fori* and the *lex loci delicti*; second, when the same infringing act infringes the intellectual property rights enjoyed by the right holder in multiple countries at the same time, it is necessary to make separate determinations in accordance with the laws of different places where protection is claimed, which greatly increases the judicial cost of ascertaining foreign laws and also puts forward higher requirements for the court’s legal application capacity.

2.2.2 Exception Supplement Rule of Limited Party Autonomy

In addition to the general principle, Article 50 of the Law on the Application of Laws also introduces the principle of limited party autonomy, allowing the parties to agree to apply the *lex fori* after the occurrence of the infringing act. The institutional value of this rule is to respect the procedural subjectivity and right of disposition of the parties, reduce the judicial cost of ascertaining foreign laws, improve litigation efficiency, and make up for the rule application dilemma when there are multiple connecting factors in the place where protection is claimed.

It should be clear that the party autonomy under this provision has strict statutory restrictions and belongs to limited party autonomy: first, the time restriction of law choice, the parties can only agree to choose the law after the occurrence of the infringing act, and the agreement on law choice before the occurrence of the infringing act has no legal effect; second, the scope restriction of law choice, the parties can only choose to apply the *lex fori*, and shall not choose the laws of other countries outside the forum; third, the scope restriction of application, the *lex fori* agreed by the parties can only be applied to the determination of the liability for intellectual property infringement, and cannot be applied to the determination of the ownership and content of intellectual property rights. The latter shall still be governed by the law of the place where protection is claimed in accordance with the provisions of Article 48 of the Law on the Application of Laws. The above three restrictions delimit the applicable boundary of the principle of party autonomy and are also the core statutory basis for examining the validity of the parties’ law choice agreement in judicial practice.

3. Empirical Analysis of Judicial Application of Legal Rules for Cross-border Intellectual Property Infringement in China

To systematically sort out the judicial application status of Article 50 of the Law on the Application of Laws, this paper takes the “China Judgement Online” as the data source, takes Article 50 of the Law on the Application of Laws as the judicial basis, limits the case type to civil cases, the cause of action to “intellectual property ownership and infringement disputes”, the document type to civil judgments, and the judgment date from January 1, 2020 to December 31, 2025. Finally, 2205 valid case samples are obtained through retrieval, on the basis of which an empirical analysis is carried out.

3.1 Basic Dimension Analysis of Case Samples

3.1.1 Judgment Time Distribution

From 2020 to 2025, the number of concluded cross-border intellectual property infringement cases in China showed an overall decreasing trend year by year, with the specific distribution as shown in Figure 1: the number of cases in 2020 reached 985, the peak in the sample period; it dropped to 532 in 2021, a year-on-year decrease of 45.99%; the number of cases continued to decline from 2022 to 2025, with only 101 cases concluded in 2025 for the whole year. The year-by-year decrease in the number of cases is closely related to the improvement of the source governance of China's cross-border intellectual property disputes and the collaborative mechanism of administrative protection and judicial protection, and is also affected by factors such as the adjustment of the scope of judicial document disclosure and the reform of centralized case jurisdiction.

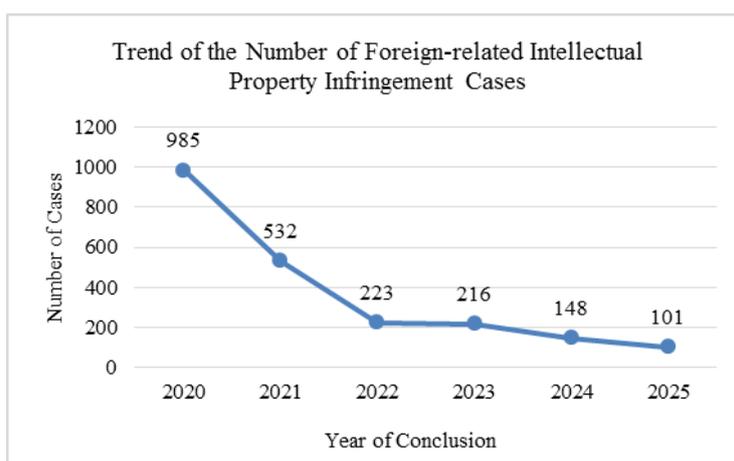


Figure 1. Trend of the Number of Foreign-related Intellectual Property Infringement Cases

3.1.2 Case Type Distribution

In the sample cases, the number distribution of different types of intellectual property infringement disputes shows a significant unbalanced characteristic, as shown in Table 1: the number of foreign-related trademark ownership and infringement disputes ranks first, reaching 1408, accounting for 63.85% of the total sample; copyright ownership and infringement disputes rank second, with 743 cases, accounting for 33.70% of the total sample; patent ownership and infringement disputes only have 28 cases, accounting for 1.27%; domain name ownership and infringement disputes only have 1 case, accounting for less than 0.1%.

Table 1. Distribution of Causes of Action in Foreign-related Intellectual Property Infringement Cases

| Cause of Action | Number of Cases |
|---|-----------------|
| Trademark Right Ownership and Infringement Disputes | 1408 |
| Copyright Ownership and Infringement Disputes | 743 |
| Patent Right Ownership and Infringement Disputes | 28 |
| Network Domain Name Ownership and Infringement Disputes | 1 |

3.2 Practical Application Characteristics of Legal Application Rules

From the perspective of the legal application of the sample cases, the current legal application of cross-border intellectual property infringement disputes in China presents the following core characteristics:

First, the law of the place where protection is claimed is an absolutely mainstream applicable rule. In the sample cases, the vast majority of cases invoke the principle of the place where protection is claimed to determine the applicable law, and the application proportion of this principle is far higher than other rules, which confirms its core status as the general principle of legal application for cross-border intellectual property infringement.

Second, the application rate of the principle of party autonomy is extremely low. Only a very small number of cases in the sample have the parties agree to apply the *lex fori* after the occurrence of the infringing act, and the principle of party autonomy is not applied in the vast majority of cases. This phenomenon is not only related to the litigation characteristic that the parties are highly antagonistic in cross-border intellectual property infringement disputes and it is difficult to reach a consensus on law choice, but also reflects the cautious attitude of judicial practice towards the application of the limited principle of party autonomy.

Third, the application of applicable law shows an obvious tendency. All cases in the sample ultimately apply Chinese law as the applicable law, and no case is adjudicated by applying foreign law. Among them, some cases apply Chinese law on the ground that China is the place where protection is claimed through the invocation of conflict rules; however, a large number of cases fail to complete the invocation and reasoning of conflict rules, fail to make any analysis on the identification of foreign-related factors and connecting factors, and directly apply Chinese law to make judgments, reflecting the widespread neglect of the obligation to apply conflict rules in foreign-related intellectual property cases in judicial practice.

Fourth, traditional rules such as the *lex loci delicti* are still applied in a small number of cases. Some cases do not apply the special rules of Article 50 of the Law on the Application of Laws, but invoke the general rules of foreign-related infringement, taking the place of infringement as the connecting factor to determine the applicable law, which reflects the cognitive deviation of the applicable boundary

between the conflict rules of intellectual property infringement and the general tort conflict rules in judicial practice.

4. Practical Dilemmas and Causes of Legal Application for Cross-border Intellectual Property Infringement in China

Combined with normative deconstruction and empirical analysis, the current judicial practice of China's legal application rules for cross-border intellectual property infringement is facing three core dilemmas, the causes of which are not only due to the normative ambiguity at the legislative level, but also from the non-standard judgment and cognitive deviation at the judicial level.

4.1 Lack of Norms for the Determination of the Place Where Protection is Claimed and Severe Insufficiency of Judgment Reasoning

When hearing cross-border intellectual property infringement cases, courts often only stop at the formal explanation of the legal basis, and fail to conduct in-depth substantive analysis on the choice of applicable law. The reason is that neither the Law on the Application of Laws nor its judicial interpretations have clearly defined the determination standard of the "place where protection is claimed", leading to the lack of a unified judgment scale for the determination of this connecting factor in judicial practice. The failure to fully explain the determination of the place where protection is claimed and the serious lack of judgment reasoning have become the most common practical disorder in the legal application of such cases. Specifically, it can be divided into three situations:

First, only citing the legal provisions without any determination and reasoning. The judicial documents only list Article 50 of the Law on the Application of Laws as the judicial basis, neither explain the determination of the "place where protection is claimed" nor review whether the parties have reached a consensus on law choice, and directly apply Chinese law to make a judgment. For example, in the case of *Wong To Yick Wood Lock Medicated Oil Co., Ltd. v. Shaanxi Weiyisheng Pharmaceutical Co., Ltd. and others for trademark infringement*, the court only stated in the judgment "in accordance with the provisions of Article 50 of the Law on the Application of Laws, the judgment is as follows", without any explanation of the reasons for the application of law.

Second, only declaring the application of Chinese law without clarifying the logical reasoning for the determination of connecting factors. Although the judicial documents list the foreign-related nature of the case and the normative content of Article 50 of the Law on the Application of Laws, they do not mention the determination process of the place where protection is claimed and the matching logic of connecting factors at all, and directly point out the application of Chinese law. For example, in the case of *Seiko Ink Co., Ltd. v. Changchun Chaoju Real Estate Agency Co., Ltd. for trademark infringement*, the court directly determined the application of Chinese law only on the ground that the plaintiff filed a lawsuit in China, without any reasoning on the determination of the place where protection is claimed.

Third, only stating that China is the place where protection is claimed without explaining the basis for determination. The judicial documents only determine the application of Chinese law on the ground

that “the place where protection is claimed in this case is the People’s Republic of China”, but fail to clarify the core elements based on which the place where protection is claimed is determined, and cannot reflect the substantive connection between the connecting factor and the case. For example, in the case of a certain Company A v. Chen Moumou for trademark infringement, the court only made the above general determination without disclosing any determination standards and consideration factors. The core cause of the above phenomena is the lack of clear norms for the determination standard of the “place where protection is claimed” at the legislative level, leading to the lack of unified judgment guidance for judges in judicial decisions. At the same time, it also reflects that some judges have insufficient understanding of the mandatory obligation to apply conflict rules and ignore the statutory requirements for reasoning on the application of law.

4.2 Confusion of Connecting Factor Concepts and Systematic Chaos in Rule Application

The law of the place where protection is claimed, *lex fori*, *lex loci delicti* and the law of the place where the right originates are independent connecting factors, which only coincide when the case facts meet specific elements. However, in judicial practice, there is a common phenomenon of directly equating the forum and the place of infringement with the place where protection is claimed, which reflects the judges’ cognitive deviation on the jurisprudential connotation and institutional essence of the “law of the place where protection is claimed”, and then leads to systematic chaos in rule application.

For example, in the case of Plaintiff Company 6, Company 7 v. Defendant Company 1 and others for trademark infringement, the court only listed the normative content of Article 50 of the Law on the Application of Laws, did not conduct any reasoning on the determination of the place where protection is claimed, and directly applied Chinese law on the ground that the case has foreign-related factors. The essence of such judgments is to completely confuse the two independent connecting factors of “forum” and “place where protection is claimed”, and directly determine China as the place where protection is claimed on the ground that the plaintiff files a lawsuit with a Chinese court, completely ignoring the core jurisprudence of the law of the place where protection is claimed, that is, taking the place where the right is claimed for protection as the connecting factor, rather than the forum where the lawsuit is filed.

In addition, some judgments have fundamental errors in rule application, failing to apply the special conflict rules for intellectual property infringement in Article 50 of the Law on the Application of Laws, but directly applying the legal application rules for general foreign-related infringement, taking the place of infringement as the connecting factor to determine the applicable law. Such judgments confuse the applicable boundary between the legal application of intellectual property infringement and general tort, violate the legal application principle that special law is superior to general law, and also lead to the frustration of the normative purpose of Article 50 of the Law on the Application of Laws.

4.3 Vague Applicable Boundary of the Limited Principle of Party Autonomy and Widespread Cognitive Deviation in Judgments

The principle of party autonomy established by Article 50 of the Law on the Application of Laws has a strict statutory boundary. Its applicable scope is limited to the determination of intellectual property infringement liability, and only the *lex fori* can be chosen, which cannot be extended to the determination of the ownership and content of intellectual property rights. However, in judicial practice, there is a common phenomenon of not distinguishing the legal application boundary between the content of intellectual property rights and infringement liability, and there is a serious cognitive deviation in the review of the applicable scope and effect of the principle of party autonomy.

From the perspective of the normative system, Article 48 of the Law on the Application of Laws clearly stipulates that the ownership and content of intellectual property rights shall be governed by the law of the place where protection is claimed. This provision is a mandatory conflict rule, and there is no room for the application of party autonomy. The limited party autonomy in Article 50 can only be applied to the determination of infringement liability, including infringement damage compensation, exemption grounds, relief methods and other matters, and cannot be applied to the determination of infringement constitution - the reason is that the determination of infringement constitution is directly related to the scope of intellectual property rights and the boundary of protection, which is essentially a category of the content of intellectual property rights, and shall still be governed by the provisions of Article 48, excluding the party autonomy of the parties.

However, in judicial practice, courts generally fail to distinguish the above boundaries. As long as the parties reach an agreement to choose the *lex fori*, the *lex fori* is applied in all cases whether for the determination of infringement constitution or the assumption of infringement liability. Even some judgments recognize the parties' agreement on law choice before the occurrence of the infringing act, or the validity of the parties' agreement to choose laws other than the *lex fori*. Such judgments not only violate the normative logic and legislative purpose of the Law on the Application of Laws, but also lead to the overstepping of the mandatory norms of Article 48, further aggravating the chaos of legal application.

5. Improvement Path of Legal Application Rules for Cross-border Intellectual Property Infringement in China

In response to the above practical dilemmas and causes, this paper puts forward specific improvement paths of China's legal application rules for cross-border intellectual property infringement from the two dimensions of legislative improvement and judicial optimization, so as to realize the refinement of legislative norms and the standardization of judicial application, and ultimately construct a logically consistent, clearly applicable legal application system for cross-border intellectual property infringement that conforms to China's judicial practice.

5.1 Legislative Level: Refine Normative Connotation and Clarify Judgment Standards

Legislative ambiguity is the root cause of the chaos in judicial application. It is necessary to refine the normative connotation of Article 50 of the Law on the Application of Laws through judicial interpretations, clarify the determination standards of core connecting factors and the applicable boundaries of rules, and provide unified and clear normative guidance for judicial decisions.

5.1.1 Clarify the Applicable Scope of Rules and Establish the Method of Disconnective Application

In view of the current vague legal application boundary between right ownership, infringement constitution and infringement liability in judicial practice, we should learn from the normative model of the Principles on Transnational Disputes Jurisdiction, Law Choice and Judgments in Intellectual Property (hereinafter referred to as the ALI Principles), list intellectual property infringement and infringement relief separately, and establish the disconnective application method of legal application for intellectual property infringement through judicial interpretations, clarifying the legal application rules for different matters.

Specifically, the normative refinement can be achieved through two paths: first, define the applicable scope hierarchically, clarify that the ownership and content of intellectual property rights and the determination of infringement constitution shall be governed by the law of the place where protection is claimed as stipulated in Article 48 of the Law on the Application of Laws, excluding the party autonomy of the parties; while the assumption of infringement liability, the calculation of damage compensation, exemption grounds and other matters shall be governed by the provisions of Article 50 of the Law on the Application of Laws, allowing the parties to agree to apply the *lex fori* after the occurrence of the infringing act. Second, standardize the logical expression of the provisions. On the basis of retaining the existing dual rule system, limit the applicable scope of Article 50 through judicial interpretations, clarify that this provision is only applicable to the matters of intellectual property infringement liability, and the determination of infringement constitution shall still be governed by the provisions of Article 48, so as to clarify the applicable boundary between the two provisions and avoid the misapplication of rules in judicial practice.

5.1.2 Clarify the Determination Standard of the “Place Where Protection is Claimed” and Distinguish the Boundaries of Connecting Factors

In view of the core problem of the lack of determination standards for the “place where protection is claimed”, it is necessary to clarify its statutory connotation and determination rules through judicial interpretations, and distinguish its boundaries from the forum and the place of infringement.

First, the statutory definition of the place where protection is claimed should be clarified. The place where protection is claimed refers to the country or region where the right holder claims that his intellectual property rights are protected, that is, the country where the intellectual property rights claimed by the right holder are granted or originate. This definition returns to the jurisprudential essence of the territoriality of intellectual property rights, clarifies the core determination standard of the place where protection is claimed, that is, the place where the right is granted, rather than the forum

or the place of infringement.

Second, the determination rules for special circumstances should be clarified. In view of special circumstances such as cross-border infringement under the Internet environment and the same infringing act infringing intellectual property rights in multiple countries, we can learn from the normative idea of “ubiquitous infringement” in the ALI Principles and introduce the principle of the most significant relationship as a supplement. When the alleged infringing act is implemented through the Internet and causes damage consequences in multiple countries, and the right holder claims intellectual property protection in multiple countries at the same time, the court may, in accordance with the case facts, choose to apply the laws of one or more countries that have the most significant relationship with the infringing act and damage consequences, so as to solve the problems of high judicial cost and chaotic judgment logic caused by the parallel application of multiple national laws.

5.1.3 Refine the Applicable Rules of Limited Party Autonomy and Clarify the Effect Review Standards

In view of the application deviation of the principle of party autonomy, it is necessary to refine its applicable elements and effect review standards through judicial interpretations, and clarify its statutory boundaries. Specifically, three core elements should be clarified: first, the time element, the parties can only reach a law choice agreement after the occurrence of the infringing act, and the law choice agreement before the occurrence of the infringing act is invalid; second, the scope element, the parties can only choose to apply the lex fori of the court accepting the case, and the law choice agreement to choose the laws of other countries outside the forum is invalid; third, the matter element, the parties’ law choice agreement can only be applied to the matters of the assumption of infringement liability, and cannot be applied to the determination of the ownership, content and infringement constitution of intellectual property rights, and the law choice agreement beyond this scope has no legal effect.

5.2 *Judicial Level: Standardize the Judgment Process and Strengthen Application Constraints*

On the basis of legislative refinement, it is more practically feasible to optimize the judicial level, standardize the judgment process of cross-border intellectual property infringement cases, strengthen the application constraints of conflict rules, improve the standardization of judgment reasoning, and fundamentally solve the problem of chaotic rule application.

5.2.1 Accurately Identify the Case Nature and Foreign-related Factors

Identification is the primary link in the judgment of foreign-related civil and commercial cases, which directly determines the accuracy of the choice and application of conflict rules. For cross-border intellectual property infringement cases, the court should first complete three identifications: first, the identification of foreign-related factors, strictly in accordance with the determination standards of foreign-related civil cases, review whether the case has foreign-related subject, object or legal fact factors, avoid applying foreign-related conflict rules to non-foreign-related cases, and put an end to the situation of ignoring the foreign-related factors of the case and directly applying domestic law; second, the identification of legal relations, accurately distinguish intellectual property ownership disputes, contract disputes and infringement disputes, and apply the special rules of Article 50 of the Law on the

Application of Laws for infringement disputes to avoid confusion with other conflict rules; third, the identification of disputed matters, use the disconnective method to split the parties' disputed matters, distinguish the three types of matters including the ownership and content of intellectual property rights, the determination of infringement constitution, and the assumption of infringement liability, and match the corresponding conflict rules respectively to avoid the one-size-fits-all application of rules.

5.2.2 Strictly Follow the Applicable Order of Conflict Rules

After completing the case identification, the court should strictly follow the rule order established by the Law on the Application of Laws and determine the applicable law step by step. The first step is to review whether the parties have a law choice agreement that meets the statutory elements. If there is a valid and legal agreement, and the disputed matter falls within the applicable scope of party autonomy, the *lex fori* chosen by the parties shall be applied; the second step, if the parties have no valid and legal law choice agreement, the general principle of the law of the place where protection is claimed shall be applied, the place where protection is claimed in the case shall be determined in accordance with the statutory determination standards, and then the laws of the corresponding country shall be applied; the third step is to adjudicate the substantive issues of the case in accordance with the determined applicable law.

It should be specially emphasized that the invocation of conflict rules is a statutory pre-procedure for the judgment of foreign-related cases. The court shall not skip the invocation and analysis of conflict rules and directly apply Chinese law, so as to ensure that the guiding function of conflict rules is substantially realized.

5.2.3 Strengthen the Obligation of Judgment Reasoning on Legal Application

In view of the current serious insufficiency of judgment reasoning, it is necessary to strictly implement the normative requirements of the Supreme People's Court on the interpretation and reasoning of judicial documents, and take the reasoning on legal application as a necessary content of the judicial documents of cross-border intellectual property infringement cases. Specifically, the judicial documents must state the following contents: first, the basis and result of the determination of the foreign-related factors of the case; second, the reason for the choice and the basis for the invocation of conflict rules; third, the determination process of connecting factors and core consideration factors, especially the determination of the place where protection is claimed, which must elaborate the matching logic between the determination basis and the case facts; fourth, the determination result and application reason of the applicable law.

At the same time, the standardization of legal application reasoning should be included in the judgment quality evaluation system of foreign-related intellectual property cases, and the constraints on judges' application of conflict rules should be strengthened through methods such as similar case retrieval and judicial supervision, so as to fundamentally put an end to the phenomenon of "no reasoning and disorderly reasoning".

5.2.4 Improve the Foreign Law Ascertainment Mechanism and Enhance Judges' Professional Capabilities

The current widespread “homeward trend” in judicial practice is largely due to the high difficulty and cost of ascertaining foreign laws. In this regard, it is necessary to further improve the foreign law ascertainment mechanism for foreign-related intellectual property cases, broaden the ascertainment channels, give full play to the role of expert assistants and extraterritorial legal ascertainment institutions, reduce the judicial cost of foreign law ascertainment, and provide institutional support for the court to accurately apply foreign law.

At the same time, it is necessary to strengthen the professional training of private international law for intellectual property trial judges, improve judges' understanding and application capacity of conflict rules, clarify the core jurisprudence and normative logic of legal application for intellectual property infringement, solve the problems of chaotic rule application and concept confusion from the subject level, and ensure that the normative purpose of the Law on the Application of Laws is accurately realized in judicial practice.

6. Conclusion

The legal application of cross-border intellectual property infringement is an important issue that continuously derives new problems with the process of intellectual property internationalization, and it is also a basic proposition related to China's in-depth participation in global intellectual property governance and the construction of the legal order of international civil and commercial exchanges. Through the normative interpretation of Article 50 of the Law on the Application of Laws and the judicial empirical investigation, it can be seen that the core dilemma faced by the current legal application of cross-border intellectual property infringement in China is not the deviation of legislative value orientation, but the ambiguity of normative expression and the anomie of judicial application. The misinterpretation of the law of the place where protection is claimed, the misapplication of the principle of party autonomy, and the lack of ubiquitous infringement rules reflect a deeper legal proposition: when the territoriality of intellectual property rights encounters the mobility of cross-border infringement, and when the certainty of legislation encounters the complexity of individual cases, how should the conflict rules of cross-border intellectual property balance the rigidity of rules and the flexibility of application? How to respond to the realistic demand for international protection while respecting the territoriality of intellectual property rights? This is not only a legal theme worthy of continuous thinking, but also an institutional proposition that needs continuous construction.

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