



PATENT PLEDGE

知识产权金融服务

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1. PATENT PLEDGE

专利权质押

- Debtor or the third party regard patent rights as debt guarantee, if debtor defaults, the creditor shall discount price, auction or sell off patent rights to get compensation in priority.

是指债务人或第三人将拥有的专利权担保其债务的履行，当债务人不履行债务的情况下，债权人有权把折价、拍卖或者变卖该专利权所得的价款优先受偿的物权担保行为。

- Moving into economic times of intellectual property, technology has become the centre of economic development, more and more companies choose to apply for a patent to protect their patent rights and make it into industrialization. Patent pledge becomes a significant approach of industrialization development and corporate financing.

步入知识产权经济时代，科学技术转变为经济发展的核心元素，越来越多的企业选择申请专利来保护自己的专利技术，并将专利技术实现产业化发展，专利权质押无疑成为实现产业化发展的一个重要途径，专利权质押在知识经济时代，成为企业融资的一条捷径。

2. LEGISLATION

法律依据

- **Article 79** Where the right to exclusive use of trademarks, the property rights among patent rights and copyrights transferable according to law are pledged, the pledgor and the pledgee shall conclude a contract in writing and register the pledge contract with the administrative department in charge.
 - **1995年《担保法》第79条** 以依法可以转让的商标专用权、专利权、著作权中的财产权出质的，出质人与质权人应当订立书面合同，并向其管理部门办理出质登记，质押合同自登记日起生效。
- **Article 227** In the case of the pledge of registered trademark rights, patent rights, copyrights or other property rights in the intellectual property, the parties concerned shall conclude a written contract, and the right of pledge shall be established when the relevant competent authority has registered the pledge.
 - **2007年《物权法》第227条规定** 以注册商标专用权、专利权、著作权等知识产权中的财产权出质的，当事人签订书面合同。质权自有关主管部门办理出质登记时设立。
- **Rule14.** Where any patent right is pledged, both the pledger and the pledgee shall jointly register the contract of pledge with the patent administration department under the State Council
 - **2010年《专利法实施细则》第14条规定** 以专利权出质的，由出质人和质权人共同向国务院专利行政部门办理出质登记。

2. LEGISLATION

法律依据

- 《Measures for the Registration of a Pledge of Patent Rights》
 - Applications for the registration of the pledge of patent rights, the parties shall submit the following documents to the State Intellectual Property office:
 - (a) the pledgor and pledgee together the signature or seal of the patent pledge registration application form;(b) the contract of patent right pledge;(c) the identity certificate;(d) agency, state authority power of attorney;(e) other required materials.
 - The patent pledge registration application is qualified after the examination, the State Intellectual Property Office registration to register in the patent, and the parties to send "patent pledge registration notice".
 - Patents were declared in the pledge period is invalid or is terminated, the State Intellectual Property Office shall notify pledgee. The patentee without pay in accordance with the provisions of the patent right has been pledged an annual fee, the State Intellectual Property Office shall issue a payment notice and notify Pledgee in to the patentee.

2. LEGISLATION

法律依据

➤ 《专利权质押登记办法》

- 质押登记需要的文件：
 - a.专利权质押登记申请表；b.专利权质押合同原件；c.出质人和质权人的身份；d.由出质人以及被委托人共同签章的委托书原件和被委托人的身份复印件；e.其他需要提供的材料。
- 专利权质押登记申请经审查合格的，国家知识产权局在专利登记簿上予以登记，并向当事人发送《专利权质押登记通知书》。质权自国家知识产权局登记时设立。
- 在专利质押期间，对质押专利的法律状态进行监控，当专利权终止或被宣告无效以及未按时交纳年费等导致权利灭失的情况，要及时告知质权人。

3. Global

放眼世界

	Singapore	India & Malaysia	EU	UK	South Korea	US
Development	slow					
Practice			less	less		fragmentary
Mode		similar				
Time					early	

3. Global

放眼世界

- **东南亚** 新加坡开展较少，印度和马来西亚开展模式和我国相像
- **欧洲** 欧盟实践较我国欠缺，英国市场化程度比较高，但由于知识产权在融资过程中要处理的共性在权保障政府提供的支持十分有限，没有一段时间整合起来，所以实践远远落后我国
- **韩国** 质押融资做的比我国早，但由于研究方面早期过度依赖资产评估，专利属性没有体现，后来出现不良，开展也较一般
- **美国** 开展零星

4. Achievement

大体成果

➤ Progress in China

我国质押融资进展

- I. solution of risk compensation and practical methods by government and institution 风险补偿的解决方式和各地方政府、商业机构提出的一些做法，
- II. combination of patent evaluation and price analysis 资产评估跟专利价位分析结合促进应用，
- III. Integrate two entity of loan and equity investment into one business model 要把借款和股权投资市场作为两种主体用一种商业模式串起来。

4. Achievement

大体成果

Record of patent pledge in 2015

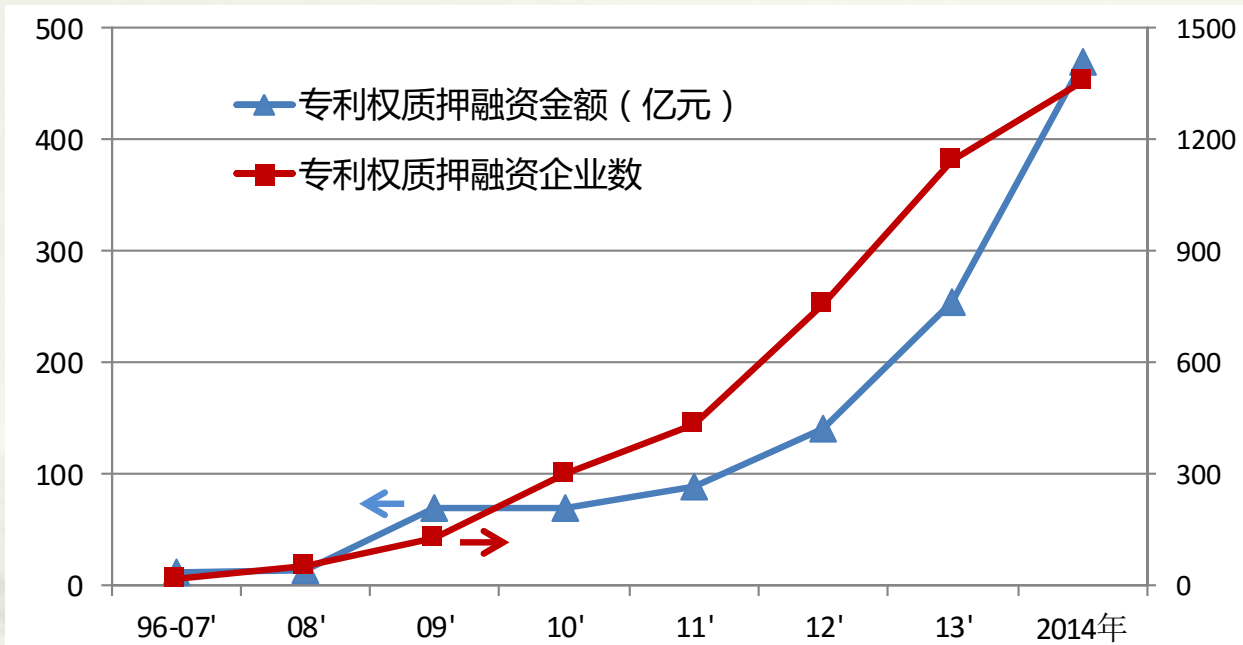
2015年各省市知识产权质押登记分布

省、市	数量 (件)	总额 (亿元)
天津市	100	16.60
北京市	192	33.60
广东省	169	58.94
四川省	71	20.40
浙江省	240	36.38
山东省	205	80.26
安徽省	156	11.56
黑龙江省	40	5.72
陕西省	258	12.50
福建省	142	23.16

In 2015, there is an obvious progress of patent pledge in China. The amount of patent pledge has increased 56 billion yuan involved in more than 2000 corporations. Sample investigation shows that accumulated 3.77 billion yuan sales growth and 0.32 billion yuan profit in related industries.

2015年，我国知识产权质押融资工作进展明显，全年新增专利权质押金额560亿元，惠及2000余家企业。对其中20件专利权质押融资项目的抽样调查结果显示，相关企业当年累计新增销售额37.7亿元、利润3.2亿元。

六、总体成效



专利权质押融资	08年	09年	10年	11年	12年	13年	14年	15年
项目数	90	171	362	535	912	1391	1850	2133
资金额 (亿元)	14	71	70	90	141	254	489	560

5. Issues

主要问题

demand 融资需求方

small company
中小微企业

▪ **low capital** 资产规模小

▪ **low credit** 授信评级低

supply 融资供给方

Risk control—reduce
pledge rate 控制风
险

✓ **Comprehensive technology**
技术 - 复杂性

✓ **Rights instability**
法律—权利不稳定性

✓ **Difficult assessment?**
评估/评价—难？

✓ **operational risk** 经营风险

✓ **difficult dispose** 质物处置难

The demand of financing in small company is high whereas banks are in short supply, which leads to higher cost.

Government needs to guide and support

中小微企业需求旺盛，银行供给不足，质押融资成本偏高，需要政府的引导和扶持

5. Issues

主要问题

- **Patent risk:** self risk+operational risk
专利的风险:自身属性的风险+经营风险
- **Higher risk:** more investments, rights instability
风险大:投入多,权利的不稳定性;
- **Higher cost:** litigation cost, investigation cost, time cost
成本高:诉讼成本,调查成本,时间成本!
- **Period:** Long period and complex procedure in litigation
周期长:诉讼程序的周期长、程序繁复

5. Issues

主要问题

1. Weak position of enterprise 企业的弱势地位

- ✓ Whether to making patent contracts or not completely depends on both parties in principle. At present, patent pledge occurs between enterprise and banks in China.

专利权质押合同的订立原则上完全取决于双方当事人的意愿，目前，我国专利权质押主要在企业 and 银行之间运行

- ✓ There is unequal position between two parties in patent pledge. In practical application, bank has unconditional decision making power. Bank is in strong position whereas enterprise is in weak position. At that time, government will intervene moderately.

在专利权质押中，双方当事人地位的不平等来源于在实际操作中，银行对是否质押有绝对的决策权，银行处于强势地位，企业处于弱势地位。这时政府会进行适度的管理，不能任凭银行从自身利益出发自主决定。

5. Issues

主要问题

2. Evaluation difficulty 专利权价值评估难

- ✓ Before making patent pledge, bank will first estimate value of patent rights. How to assess the value accurately involves in lots of problems, such as innovation degree of patent technology, market demand and practicability of patent. And bank also need consider complexity of imitation, function, substitutes and term of validity of patent.

进行专利权质押之前, 银行要对专利权人的专利进行价值评估。如何能够准确评估该项专利权的价值, 涉及到很多方面的问题。例如专利技术的革新程度、市场需求量的大小、专利产品的实用性, 而且要考虑该项专利产品被仿制的难易程度、该项专利产品的功能是否能被其他相类似的产品替代以及专利的有效期限等

- ✓ Besides, the attributes of longer period will also result in inaccuracy evaluation, for example, the estimation value in active demand may larger than in saturation period.

另外, 时间性强的特点也会导致一项专利权在专利产品畅销期的评估价值应比饱和期大得多

5. Issues

主要问题

3. Risk 银行承担风险大

- ✓ Risk from policies, technology and market

政策、技术、市场专利等多重风险

4. Difficulty realization 专利权质押质权实现难

- ✓ Corporeal movables pledge: because pledgee owns the hostage, pledgee can take priority in compensation through auctioning, selling off hostage or price discount. Hostage of corporeal movables has certain stability and does not need special transferring procedure. Occupation and usage of hostage is unique.
- ✓ Transferring patent rights is restricted by law.

有形动产质押：因为质权人占有质物，质权人可通过拍卖、变卖质物从其价款中优先受偿，或以质物折价抵偿。动产质押质物的价值有一定的稳定性，其转让也不需要特别的手续，质物占有使用具有唯一性

专利权的转让还受到法律的限制