Study on Legal Risk Prevention Issue in University/College Scientific Research Cooperation

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Abstract. Social science and technology progress increasingly at present. As the main force of scientific research, university/college researches and develops new-type technological achievements via contract with enterprise. Thus it can be seen that promoting university/college scientific research cooperation has important significance. However, it cannot be denied that lots of legal risk problems exist in cooperation. Therefore, this paper discusses the legal risks from the perspective of university/college scientific research cooperation, analyzes in detail from scientific research cooperation contract and achievements patent risks, hoping to promote university/college scientific research cooperation to be more standard and effective starting from preventions.

Scientific research cooperation refers to the labor form of scientific research activity rationally finished between scientific research personnel and organization. Scientific research often needs a great deal of scientific research experience and time. The relevant problems of science and technology can be resolved via scientific research cooperation in university/college, and university/college and enterprise are scientific research cooperation objects. Cooperative research of both parties can further research technological products, improve technical R&D strength, thereby achieving the mutual benefit and win-win. However, seen form current cooperation status, the legislation on university/college scientific research cooperation is weak, and scientific research cooperation failed to sign contracts, resulting in cooperation cannot be smoothly carried out. Thus the interests of cooperation parties are difficult to be guaranteed, seriously restricting its benign development. Therefore, the research on relevant problems of legal risk prevention of university/college scientific research cooperation has certain practical significance.

Outline on University/College Scientific Research Cooperation

University/college scientific research cooperation refers to the activity of cooperation between university/college and enterprise for conducting research and innovation on new technology, including the cooperation modes of personnel communication, technical R&D, cooperation consultation. Cooperation parties mutually bear risk and share profits. University/college scientific research cooperation involves multiple types, such as different layers of entities, as well as relevant institutions and enterprises of scientific research cooperation. After establishing cooperation relations, both parties share the achievements of scientific research and development. Such cooperation mode is beneficial for further exerting talent skills and advantages in university/college. In addition, enterprise can provide assets and equipment for university/college scientific research, and the final scientific research achievements can also be used by enterprise for commercial activities.

University/college scientific research cooperation has resources sharing. University/college and enterprise rely upon each other mutually, the investment resources of university/college is generally talent resources, own resources and technical resources, while enterprise investment resources are mostly assets and site. In addition, university/college scientific research cooperation has asymmetry. Scientific research cooperation provides objective conditions for university/college, but it cannot interfere with university/college scientific research process and achievements. Meanwhile, due to cognition deficiency on market consumption in transfer fee contract, it has resulted in difficulty for university/college to conduct effective evaluation on enterprise market sales volume. Moreover, University/college scientific research cooperation has imperfectness. Fuzzy area may inevitably exist.
in the process of singing, and contact parties would be difficult to conduct accurate division, which greatly increases scientific research cooperation risks.

**Research on Legal Risks in University/College Scientific Research Cooperation**

University/college scientific research cooperation has numerous legal risks, bringing legal risks to contract, including legal risks in patent right. As university/college scientific research cooperation belongs to scientific research achievements, its relevant projects have certain high risk nature. The details of legal risks in university/college scientific research cooperation are as follows.

**Legal Risks in Contract**

Lots of legal risks may exist at negotiation stage of contract. Contract is signed after mutual understanding, trust and identification on conditions. However, both parties start from own angle before contract singing, thus mala fide concealing may inevitably exist, the leakage of technical know-how is one of typical representatives at the time of signing contract. It is not difficult to find that in the research on scientific research cooperation before signing contract, university/college failed to establish risk prevention consciousness. They unintentionally disclose scientific research technology to enterprise, such as scientific research formula and dosage. The leakage of data shall seriously affect both parties’ cooperation.

Risks at the stage of contract signing. Both parties sign contract after establishing trust relations. However, the stage of singing contract is also the stage mostly likely to have legal risks, including contract contents risk, contract entity qualification and contract breach regulations. There should be detailed regulations on various items, and both parties should carefully check contract contents before signing. Once problems are found, it should be timely resolved via communication. Amendment after signing contract shall not be protected by law. In addition, it is pointed out in the affirmation on contract entity in the *Contract Law of the People's Republic of China* that university/college does not meet the qualification of party for signing contract. Therefore, teacher shall be the best beneficiary in university/college scientific research cooperation. However, teachers’ benefit and university/college benefit are not completely consistent. It results in irrevocable items in contract signing, leaving numerous hidden dangers for scientific research cooperation.

Risks after contract signing. Contract shall be effective after signing, but it is inevitable that one party fails to execute as per contract requirements, resulting in the occurrence of contract breach phenomenon. If the counterpart does not ascertain, it shall result in the occurrence of numerous phenomena. Meanwhile, contract parties may have inconsistent opinion on contract in future. These signs may result in legal risks in university/college scientific research cooperation.

**Legal Risks in Patent Right**

There are lots of legal risks in patent right, such as right scope and patent products sales. Certain technical risks may exist in the R&D of patents. The economic market changes quickly, patent also has certain timeliness, which cannot guarantee the same market advantage before and after R&D. Patent is the achievement of university/college scientific research cooperation, but patent technical ownership is not pointed out explicitly, resulting in numerous risks in patent ownership transfer. It is mentioned above that patents achievements should be shared by parties in university/college scientific research cooperation, but patent itself does not possess commodity property, so it needs to conduct value evaluation on patent. The higher the technology in patent product, the stronger the monopoly shall be. Generally, patent does not possess certain legal protection period, such deficiency of time limitation shall also result in numerous risks in patent.
Legal Risk Prevention in University/College Scientific Research Cooperation

Identifying Both Parties’ Functions Basing on Cooperation and Win-Win

Technical cooperation of university/college should be based on both parties’ joint interest to establish cooperation and win-win concept. Contract is for restricting both parties’ behaviors and ensuring their interests, so for decreasing legal risks in scientific research cooperation, due diligence should be conducted well to be explicit on both parties’ functions. Both parties should consult to sign penalty clause before signing contract, and require the counterpart to provide business license as well as qualified certificates acknowledged by law. In addition, survey should be carried out on the authenticity of certificates. Moreover, for ensuring patent achievements sharing, university/college can also sign contract of technology appraised as capital stock for sharing patent achievements with enterprise. For reducing legal risks in university/college scientific research cooperation, university/college can also assign specialized personnel to survey enterprise sales, operation and reputation to continuously reduce legal risks.

Emphasizing on Value Evaluation

As patent achievements of university/college scientific research cooperation do not possess commodity property, effective evaluation should be conducted on patent and achievements. Cooperation parties should emphasize on value evaluation, explicitly master relevant technical R&D level and influence factors of value evaluation, and offer recommendation suggestions when implementing evaluation. In addition, market development environment should be regarded as starting point to identify current market development status, and conduct evaluation on achievements via market survey. Patent product can be applied to conduct practice check if necessary, so as to ensure conformity between patent evaluation value and actual value, and guarantee the fairness and justice in cooperation.

Perfecting Transaction Clauses

Transaction clauses concern both parties in university/college scientific research cooperation, so transaction clauses should be emphasized and perfected. The name of scientific research achievements should be explicitly appointed, and cooperation mode should be identified. The implementation on scientific research cooperation is expected to perfect scientific research achievements service obligation. Responsibility should be explicitly defined, and the relevant disputes on scientific research achievements and relevant risks of scientific research achievements should be regulated to be borne by university/college before the starting of scientific research cooperation. The technology research personnel in university/college scientific research cooperation should ensure the originality and effectiveness of scientific research achievements, so as to reduce contract legal risks. Scientific research achievements should be explicitly appointed, and improved achievements should be possessed by university/college. University/college is entitled to conduct technical updating on scientific research achievements, and it can be appointed as per conditions to ensure that technological achievements can adjust and balance both parties’ interests and do well fairness and justice as far as possible. The inventor of university/college scientific research achievements can become the supervisor of enterprise contract use, and the market effect of scientific research achievements should be paid attention to at every moment to timely adjust technology and conduct technological R&D as per market change, thereby substantially improving the social effect of scientific research achievements.

Prevention and Control on Contract Legal Risks

For reducing prevention and control on contract legal risks, contract negotiation should be paid particular attention to. Both parties should conscientiously review when signing contract. Of which, enterprise should master the expenses needed for scientific research achievements, and conduct practical survey on requirements of university/college quotation. The parts not marked clearly should
be timely resolved by university/college, and enterprise should tightly master budget to prevent assets waste. In the process of negotiation, both parties should be flexible and communicate in detail on parts cannot be communicated. When both parties confirm contract contents, punitive agreement should be added to reduce the occurrence of contract breach phenomenon as far as possible. Finally, it needs to continuously strengthen contract management and lay emphasis on contract check. Moreover, the legitimacy and completeness of seal in contract should be checked. Furthermore, file management should be conducted to strengthen contract text and prevent the leakage of trade secrets. What’s more, acceptance should be conducted on scientific research achievements, and the date of lodgment should be implemented as per experiment order and be accepted scientifically to prevent unnecessary trouble in the future.

**Conclusion**

To sum up, there are numerous legal risk problems in university/college scientific research cooperation. Therefore, for further ensuring both parties’ interests, legal risks should be scientifically circumvented to reduce risk as far as possible and establish cooperation and win-win concept. In addition, the functions of both parties should be identified, value evaluation should be paid particular attention to, and contract legal risk prevention and control should be laid emphasis on. By virtue of prevention and control on contract legal risks, the interests of cooperation parties should be maintained as far as possible to reduce legal risks, thereby further promoting the scientific development of university/college scientific research cooperation. The effective cooperation between enterprise and university/college can jointly promote the virtuous development of technological innovation new-type country.

**References**

