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Government-backed Patent Funds in China

HAIJUN, Jin / TU, Yuli / WANG, Shutong: Government-backed Patent Funds In China. Their Role As Policy Tools To Promote Innovation by SMEs, Tech Monitor, Oct-Dec 2013, pp. 24-30

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Summary

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Abstract

In the present paper, the authors provide the reader with an overview of the patent funding policies applied in China by both the central government and local governments, with a focus on the impact of such policies on the activities of small and medium sized enterprises (SMEs). After analyzing the benefits and risks associated with the patent funding policies in question, the authors come up with several recommendations on how to optimize existing policies for the benefit of all stakeholders, including SMEs.

Summary

Small and medium-sized enterprises (SMEs) are one of the key driving factors of the Chinese economy. In terms of innovation, SMEs account for more than 65 % of the total applications regarding invention patents in China. Nevertheless, the ratio between patent applications and patents granted is still at a low level. This is, inter alia, owed to the fact that SMEs often lack financial resources to obtain and protect Intellectual Property Rights (IPRs), particularly patents.

As a response to this, both the Chinese central government and local governments have issued patent funding policies, following the spirit of the National Intellectual Property Strategy adopted in 2008 (NIPS). NIPS places the creation and utilization of intellectual property within the heart of the strategies for China's overall social and economic development.

At the central government level, the so called "general preferential policy" is in force, since the establishment of a patent law system in China back in 1985. According to this policy, patent applicants and patentees, who are not able to cover patent fees, are entitled to apply to the Chinese State Intellectual Property Office (SIPO) for reduced fees or for a postponement of payment of such fees. Furthermore, in 2009, the Chinese Ministry of Finance set up special funds for subsidizing patent applications of Chinese companies, including SMEs, abroad.

In line with NIPS, all Chinese local governments have issued patent fund policies, applying within their territories. Since detailed data regarding each individual policy was not available, the authors limited their analysis on the patent funding policies adapted by the local governments of Shanghai and Beijing.

Reliable evidence regarding the impact of the aforementioned patent fund policies on the patenting activities of Chinese SMEs is not available. This is, in part, owed to the fact that the Chinese government

amended the definition of SMEs in 2011, excluding a considerable amount of companies from the respective category.

Notwithstanding the above, the authors argue that certain positive tendencies can, nevertheless, be observed. For instance, the number of patent applications by SMEs has increased dramatically in the last years, even though since 2011 a significantly lower number of companies are considered as SMEs for the respective statistics (due to the new restrictive definition adopted in 2011). Accordingly, the R&D expenditure of SMEs in 2011 grew with a rate of 40.30 % compared to the previous year.

Regardless of these positive signals, the above policies also bear risks, the most prominent one being the risk of misconduct and abuse of funds. This is, particularly, demonstrated by two notable cases, in which patent applications were filed only for collecting subsidies, without the intention of using the patents (cf. Shanghai Sidi Enterprise Management Consulting Co. Ltd. vs. Shanghai Municipal Intellectual Property Office and the case regarding the misconduct of an individual named Wu).

Furthermore, the fact that none of the above policies makes the payment of subsidies subject to some form of quality control of the patent applications, may induce junk patents. In addition, the fact that applications regarding invention patents, which under Chinese patent law undergo thorough examination, are equally subsidized with applications for utility model and design patents, which are not subject to such examination, has channeled significant amounts of subsidies to low-tech utility model and design patents, hindering, therefore, innovation in promising technological areas.

In order to reduce the aforementioned risks, the authors recommend, firstly, the use of so-called “patent assessment reports” (reports provided by SIPO, upon request, regarding to utility model or design patents) in the funding process, in order to avoid unjustified payments of funds. Secondly, the authors support the creation of a database for patents already funded, which could eliminate duplicate funding. Besides that, and in addition to funds, consultation services on IPRs should be offered to Chinese companies, following the model introduced by the Korean Intellectual Property Office.