

The Remuneration of Employees' Inventions Institute of China

Ge Huilei PhD student

Hua Zhong University Of Science And Technology School Of Management China

Email:394779418@qq.com

Abstract: With the rapid development of economy, the number of the remuneration of employees' inventions is also growing. Statistically, most of the National Invention Patent every year is this, the intellectual labor force that the inventor or creator creatively put in should get a reward. Planning good is not only beneficial to the construction of an innovative country, but also to strengthen the competitiveness of our country in the world. In 2015, the draft regulations on the invention of the office made public comments, focusing on the remuneration of employees' inventions. The important stipulation is that, priority of agreement and supplement of legal. This paper will also discuss the reasonableness of this principle and put forward some idea, so as to perfect The Remuneration of Employees' Inventions system of our country.

Keywords: patent, employees' inventions, remuneration of system, research

The Remuneration of Employees' Inventions system is the core of patent law, and the inventor of the employees' inventions is more likely to ignite controversy, and in practice about such cases, there are numerous disputes. In April 2015, the draft of the job creation bill (submitted for review), which was drafted by State Intellectual Property Office, was published for public consultation. In the fourth large chapter, the reward and remuneration are stipulated, and in which take "priority of agreement and supplement of legal" as the mainly principle. Science technology is the first productive forces, while science technology also require the creation of talents. The best incentive for the creation of talents is to reward them.¹

I. Definition and significance of the remuneration of employees' inventions

It refers to the inventor or creator of post invention completed post invention, employment units implement the invention to create profits, and the inventor or creator get part of economic interests from the profits.

The implementation of the compensation system for the job creation has great positive significance for promoting the innovation of science technology, social

innovation and the construction of innovative country. First the system arouse the public innovation of the whole society , promote the development of economic society , innovation as the important object of intellectual property rights, which plays an important role in promoting the construction of innovative country. Giving compensation incentive to the inventor is the most direct and effective way to promote innovation. Secondly,the remuneration of employees' inventions is the reasonable income for labourers .In order to obtain the patent of a invention, the inventor must spend a lot of time on work, earning rewards takes for granted on the social ethics, and to a certain extent, also improves the economic condition and living quality of the workers. Finally, The system also is an important part of the intellectual property strategy and the basic guarantee for the successful implementation of intellectual property strategy. The foundations of the implementation of intellectual property strategy is to formulate and improve relevant laws and regulations. In recent years, to make our country's law adapt to the development of economic society, China's patent law, copyright law and other laws have made further modifications, the remuneration of employees' inventions In all the China's "patent law" previous changes, the remuneration of employees' inventions has received the most attention,and it provides a basis for the realization of the intellectual property rights strategy.Besides, the more controversial focus issue, is also one of the focus areas China's "patent law"'s in the fourth time to modify .

II. Related issues relating to Article 16 of the Patent Law

Article 16 of the Patent Law is also known as "a Service Invention-Creation Reward Law", because the content of Article 16 since the birth of Patent Law of the People's Republic of China has only been involved in the rewards for a service invention-creation. Fourth Amendment to the proposed amendment to the existing Article 16 of the Patent law has two sides. First, the existing legal provisions shall be adjusted to the 1th paragraph. Second, it adds a new echo of the draft Article 6 Paragraph 3 of the content as the Paragraph 2 . On the one hand, the existing legal provisions ---The entity that is granted a patent right shall award to the inventor or creator of a service invention-creation a reward and, upon exploitation of the patented invention-creation, shall pay the inventor or creator a reasonable remuneration based on the extent of spreading and application and the economic benefits yielded, are adjusted as----the entity shall award to the inventor or creator a reward after a service invention-creation is granted the patent right and, upon exploitation of the patented invention-

creation, shall pay the inventor or creator a reasonable remuneration based on the extent of spreading and application and the economic benefits yielded. The reason for the change is that other entities can apply the patent in practice for some entities has transferred the creation of the job to them before applying the patent. In this case, the entity granted a patent right is no longer the entity within the inventor or creator, but the assignee. It is not reasonable to require the entity that has paid the transfer fee to give the inventor or creator rewards and remuneration. Thus, the draft article has amended to adjust the subject of reward to the inventor or creator is the entity granted a patent right with the inventor or creator.

"Agreed priority" has still remained in the Implementing Regulations of the Patent Law of the People's Republic of China such laws, and has not been clearly stipulated in the Patent Law. However, Article 45 of the Law of the People's Republic of China on Promoting the Transformation of Scientific and Technological Achievements, which was introduced in 2015 after the First amendment of the Patent Law, expressly stipulates that: "The means and amount of the award and remuneration of the Scientific and Technological Achievement Unit have not been stipulated or agreed with the scientific and technical personnel, the following standards shall To reward and reward those who make important contributions to the transformation of the technical achievements of the job." It is suggested that the reward "agreed priority" clause should be added to article 16 of the draft. For example, the provisions of Article 76 of paragraph 1 of the existing rules in the Implementing Regulations of the Patent Law of the People's Republic of China may be transplanted into a legal clause in Article 16 of the Patent law. That is , the expression---The entity that is granted a patent right can agree or stipulate the form and amount of a reward and remuneration with the inventor or creator in their regulations established by laws based on Article 16 of the Patent law, should be adjusted that the entity where the inventor or creator accomplish a service invention-creation, can agree the form and amount of a reward and remuneration with the inventor or creator in their laws. It also shall be the Paragraph 2 of Article 16 of the Patent law---a Service Invention-Creation Reward Law.

III.The application about The Remuneration of Employees' Inventions Institute of the principle "priority of agreement and supplement of legal"

Firstly, according to the china's Patent law (2008) and Implementation details

of the patent law (2010), at present, one is principled only to the employees' inventions that has not stipulated the principle of "supplement of legal". However, the Implementation details of patent law (2010) plans that the unit can make an agreement with the inventor, meanwhile, if not an agreement between the unit and the inventor, the entity require minimum standards that the law plans. These two parts constitute the principle, "priority of agreement and supplement of legal", that China has decided the remuneration of employees' inventions. Implementation details of the patent law (2010) raised the standard, but it didn't adjust the standard of remuneration. The modified draft had amendment on the limitation and the remuneration. It abolished the plan using this entity's material technology conditions, and also plan that the entity and the inventor make an agreement about the entity, then the entity should give a reward. So, as can be seen though the draft, countries also encourage the prior agreement between inventors and entity.

According to the the remuneration of employees' inventions, China make legislation, Contract law (2009) , article 326 to 328, Law of the People's Republic of China on Promoting the Transformation of Scientific and Technological Achievements(2015) , article 44 to 45, The invention bill(draft the review) (2015). The Forth Chapter not only plan the remuneration of employees' inventions institute to the inventor, but also restrict conventions, in order to guarantee legal rights and interests about the inventor. To the classification on these legal documents , Patent law and contract law make a principal plan on the employees' Inventions, whilst Implementation details of the patent law, Promote the conversion of scientific and technological achievements , and service invention draft regulation require specific amount and proportion. According to the difference of regions in industries, Draft duty invention bill adopts the calculation method based on the average monthly wage on the legal quota, compared to the quota of implementation details of the patent law. In the compensation on the stipulation limit, Draft duty invention bill is the most abundant, Promote the conversion of scientific and technological achievements is more diversify and looking. Because of Implementation details of the patent law is earlier, it is lower than the former on the minimum amount. According to Implementation details of the patent law and Promote the conversion of scientific and technological achievements, they are based on " profit" on calculating the remuneration , however the profit is more difficult for approval. So Draft duty invention bill provides to "sales", "pay reasonable multiple" on the basic of this

way. These are all about statutory standards. As time goes on, it is clear that the state's standards for inventors is increasing year by year, and it also tend to provide a reasonable standard of calculation.

IV. Thinking about the principle "priority of agreement and supplement of legal"

"priority of agreement and supplement of legal", which is an important principle in the remuneration of employees' inventions. Of course, there are some problems mentioned above in practical .Then, how to make this system work out better? the author proposes to perfect this principle from the following aspects.

Firstly, the contents and methods of agreement. The form of agreement can be a agreement between the unit and the inventor, and can be a agreement agreed through the rules and regulations formulated by the entity legally. The entity and inventor can through negotiation make a general agreement in the labor contract signed by two sides, or sign a separate agreement to one invention.The method of agreement is not limited to currency, it can be various methods of investment, option, bonus, fund, promotion, salary and vacation.The agreed monetary reward should not below the legal limit.The content should object to law, not eliminate or restrict the rights of the inventor, the specific amount calculation should have basis.More importantly, agreed monetary reward should not below the legal standard.

Secondly, to regulate the way of agreement priority and prohibit abuse. The author thinks agreement negotiation can be increased. Whether add the terms of contract management in the judicial interpretation, or guide in the mode of strict negotiation regulated through legislation . Germany's experience has use for reference, the balance of bargaining power is the soul of "convention priority" system fairness. Developed union system can not only protect the interests of employees in a dispute over the invention, but also play a positive role in negotiating agreement . While china is still very weak in union bargaining power, so it needs to learn from the German mode by negotiation process , such as, the article of Draft duty invention bill (2015) states that the entity should take inventor's advice when determining the post invention rewards. As prescribed in paragraph 2 of article 18 that any agreement or regulation canceling or restricting the inventor shared is invalid, or should bear the liability for compensation to the inventor loss according to the provisions of article 38. Secondly, strengthening the review of the entity's rules and regulations is

necessary. Japan's Franchise law allows the court that have the right not to refer to, rather than to consider the real contribution of the employees through the company, in order to calculate the remuneration. The law should stipulate that the widely association should be restricted, so as to prevent the abuse of power, otherwise it should be deemed invalidly. Under the situation of Chinese labor union immaturity system, explicitly, the author thinks that can limit the entity's rule-making through

The intervention of public power. For example, the intellectual property administration organ intervene and require the way of distribution about profits and the distinction between reward and remuneration, as well as the payment time, conditions, specific for ms and soon, through the way of the intervention.

REFERENCES :

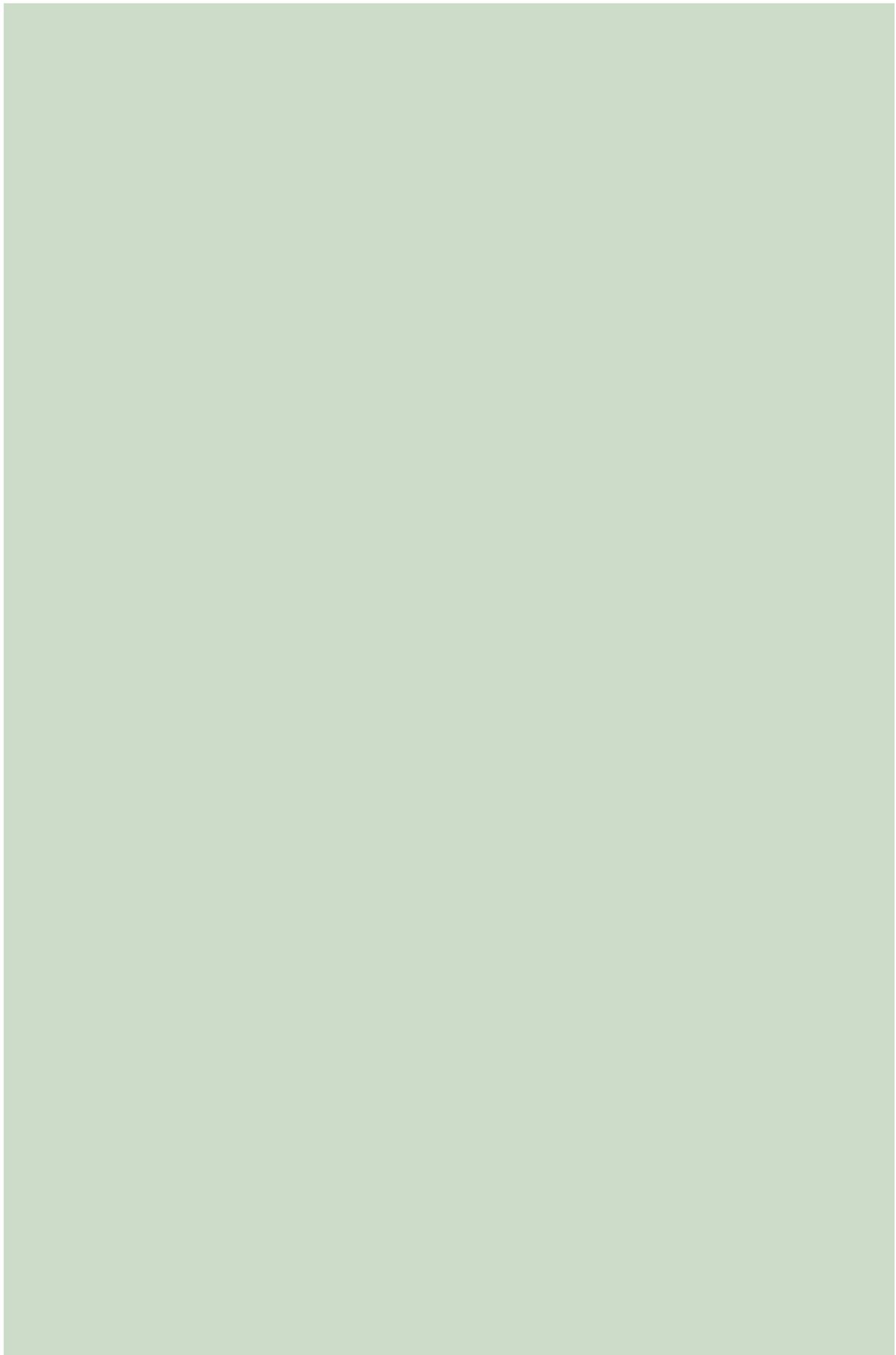
Yao Leilei Hao Qingping. Analyses the service invention compensation system [J]. Journal of legal expo ten-day, 2014 (3).

The trend of "thick employers" in the American and German invention system and its reference [J]. Intellectual property rights, 2015(11):115-121.

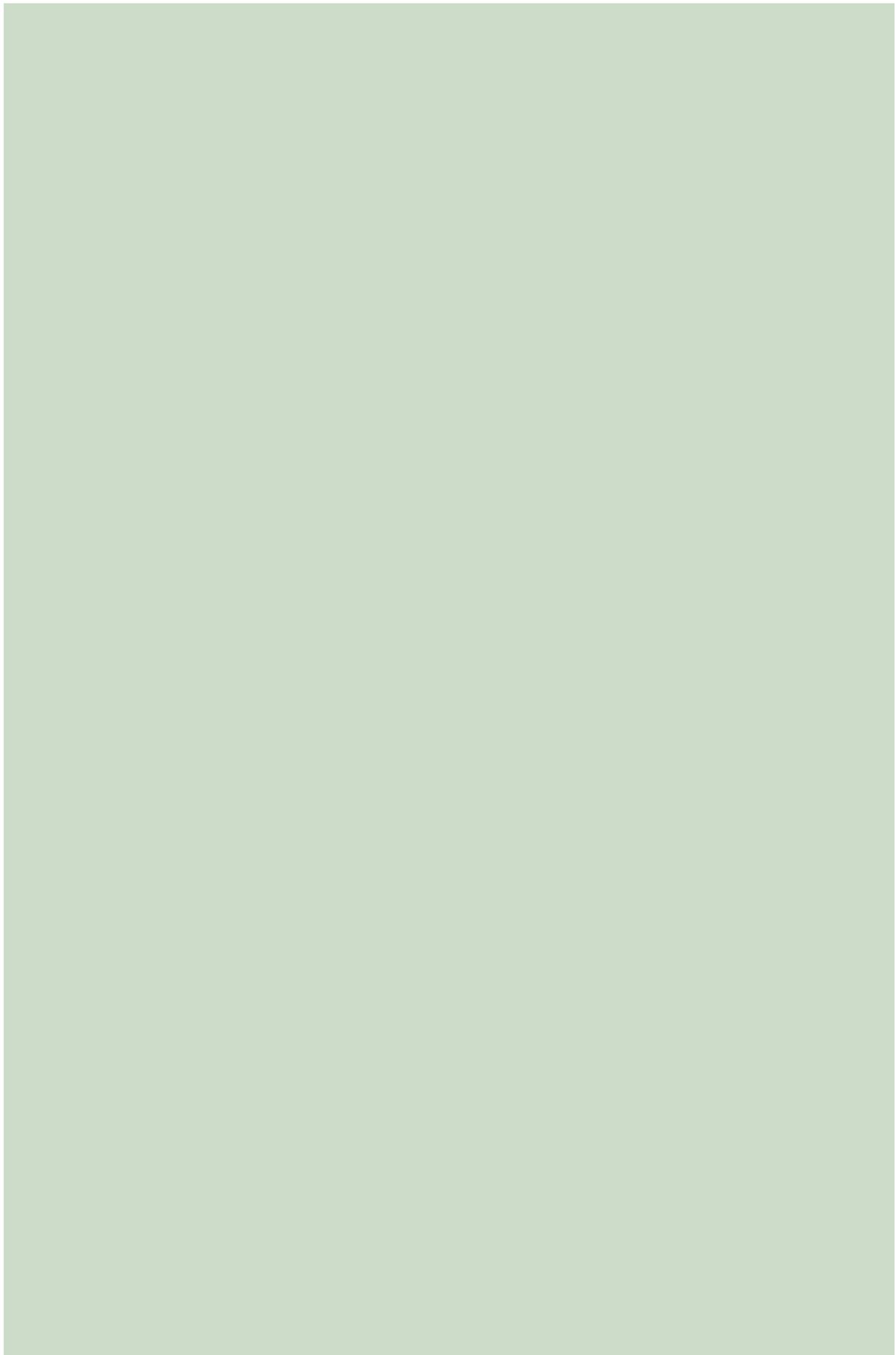
Lewen, zhao nan, du valiant. Brief discussion on the changes of the relevant laws in patent law [J]. China invention and patent, 2015(8):126-128.

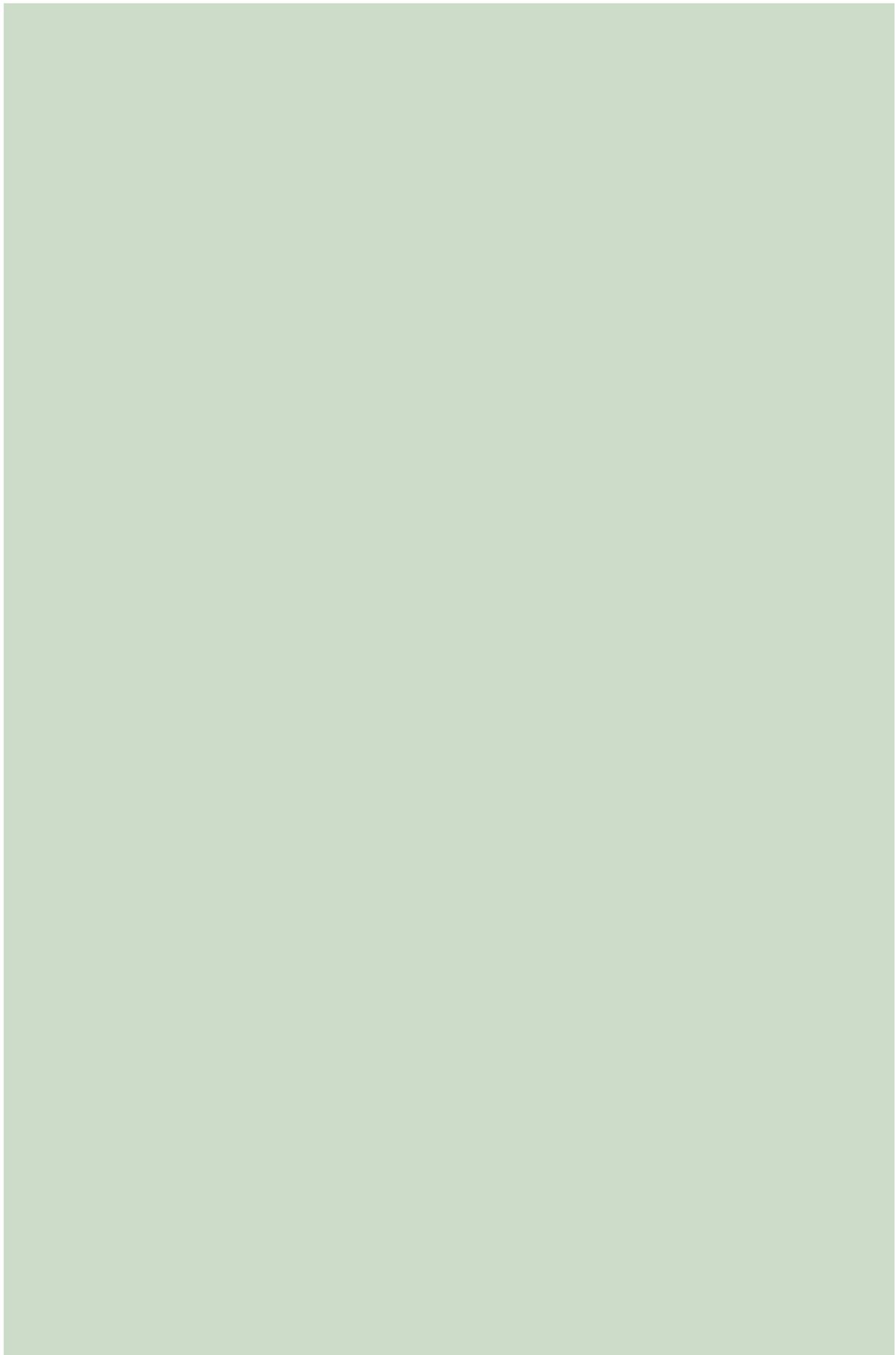
Xu tao. Research on the reward system of the job creation award -- from the principle of appointment and legal principle, the invention and patent of China, 2017, 14(6):91-95.

The Chinese inventor association and the state intellectual property office: the research report on the protection of the rights and interests of the position inventor (2013), p. 9. See the state intellectual property office network Station, May 20, 2014 visit.









I. Definition and significance of job creation reward

Service invention reward refers to the inventor or creator of post invention completed post invention, employment units implement the invention to create profits, the inventor or creator from profits for part of the economic interests.

The implementation of the compensation system for the job creation has great positive significance for promoting the innovation of science and technology, social innovation and the construction of innovative country. First invention compensation system to arouse the public of the whole society innovation, promote the development of society and economy, innovation is an important object of intellectual property rights, plays an important role in promoting the construction of an innovative country, to the inventor to give compensation incentive is the most direct and effective way to promote innovation, secondly, the service invention for labourers reasonable labor remuneration income, the inventor in order to obtain the patent of invention, must spend a lot of work, earn rewards and is granted on the social ethics, and to a certain extent, also improved the economic condition and quality of life of the workers. Finally, the compensation system for the job creation is an important part of the intellectual property strategy and the basic guarantee for the successful implementation of intellectual property strategy. Implementation of the foundations of the intellectual property strategy is to formulate and improve relevant laws and regulations, in recent years, to make our country's law and adapt to the development of society and economy, China's patent law, copyright law and other laws have made further modifications, including the remuneration paid to the post invention, is China's "patent law" in all previous changes received the most attention, the focus of the controversy more sexual problems, is also

China's "patent law" for the fourth time to modify one of the focus areas, provides a basis for the realization of the intellectual property rights strategy.

Ii. Related issues related to article 16 of the patent law

The patent law article 16 is also known as "duty invention to reward law", because since China was born of the patent law article 16 has been just involve the content of the post invention of reward and remuneration. Fourth SongShenGao of revision of China's existing in the modification of the patent law article 16, a fine-tuning the existing legal provisions of paragraph 1, the second is new add echo SongShenGao under paragraph 3 of article 6 of the content as paragraph 2. On the one hand, it is stated in the existing provisions that "the unit that is granted the patent right shall give a reward to the inventor or creator of the job creation. Invention patent after implementation, according to its application scope and obtain economic benefits, the inventor or creator a reasonable remuneration "fine-tuning, proposed changes into" post invention after being granted a patent right, the unit shall give rewards to the inventor or creator; After the invention and creation of the patent, the unit shall give reasonable remuneration to the inventor or designer according to the scope and economic benefits of its promotion and application. The reason for its modification is: "in practice, some units transfer the invention and creation to other units before applying for a patent, which is patented by them." In this case, "the unit that is granted a patent is no longer the unit of the inventor or the designer, but the unit." It is not reasonable for the unit that has paid the transfer fee to give the inventor or designer the reward and remuneration. To this end, the draft is amended to stipulate that the inventor or designer shall be the unit of the inventor or creator who gives the reward to the inventor or designer.

The "agreed priority" remains in the legal status of administrative regulations such as the enforcement rules of the patent law and has not been clearly defined in the patent law. And the patent law for the first time in 2015 after modification of the "promote the conversion of scientific and technological achievements"

article 45 have specific provision: "provision of the complete unit of scientific and technological achievements, nor with the science and technology personnel and amount of the reward and remuneration agreed upon way, to complete, according to the following standards into position to make important contributions to the staff of scientific and technological achievements reward and remuneration". In the article 16 of the draft, it is recommended to increase the legal terms of the "agreed priority" of the job creation award. For example can be referred to in paragraph (1) of the current "out detailed rules for the implementation of patent law" the 76th provisions content slightly revised overall transplantation for a legal provisions in the patent law article 16, is the unit of "has been granted a patent right may be agreed with the inventor, designer or in the formulation of rules and regulations in accordance with the law of the provisions of the patent law article 16" reward and remuneration way and amount of expression is modified to "the inventor or designer to complete duty invention where the unit may be agreed with the inventor, designer or in the formulation of rules and regulations in accordance with the law stipulated in the" invention award, remuneration way and amount, and as the patent law article 16 "duty invention to reward law" the 2nd.