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RESEARCH ON INTELLECTUAL PROPERTY PROTECTION OF WORKS OF APPLIED ART IN CHINA

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Abstract: The development of human society is interwoven with the art, and people's aesthetic conceptions have also improved significantly with the progress of technology and the continuous emancipation of mind. Therefore, works of applied art have become more and more popular. This paper defines the concept of works of applied art, and expounds the differences between works of applied art, artworks and appearance designs. By referring to the laws and regulations of relevant countries, this paper emphasizes that works of applied art should have both practicality and artistry. Based on the analysis of the legal dilemma of works of applied art, such as the lack of clear legal provisions in legislation and the different judicial recognition standards, this paper puts forward some suggestions, such as the principle of selective protection of works of applied art, the application of copyright or patent protection to works of applied art, and standards of separation between practicality and artistry when revising the law.
Keywords: Works of applied art; Copyright; Patent right; Practicality and artistry

1 INTRODUCTION

In recent years, Kate Middleton has attracted a great deal of attention for the different and unique brooches she wears. The reason why people pay attention to the jewelry worn by Kate Middleton is not only because of the high international influence of her, but also because people favor practical and ornamental artworks. The works of applied art with dual characteristics are the mental labor of the designer while meeting the material and cultural needs of people. It is generally believed that such works should be protected by the intellectual property legal system, but how to protect them and which law should protect them are the core issues that scholars are currently discussing. In the face of the controversies in academic circles and the numerous cases in judicial practice, the exposure draft of the revision of the *Copyright Law* in 2014 explicitly introduced "works of applied art" into the scope of protection of this law.

2 THE DEFINITION OF WORKS OF APPLIED ART

Works of applied art is a type of work that is expressly protected by the *Berne Convention for the Protection of Literary and Artistic Works*[1]. With regard to the concept, WIPO has explained the following in the *Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971)* to describe the contribution of those who design and create clothing, furniture, wallpaper, jewelry, ornaments, gold and silverware in the field of art[2]. *The Guide* adopts the method of enumeration to express the concept of works of applied art. In the *Legal Glossary of Copyright and Neighboring Right* written by the World Intellectual Property Organization, a highly general approach is adopted to summarize the concept as follows: works of applied art include handicrafts and industrial manufactures[3].
As members of the *Berne Convention for the Protection of Literary and Artistic Works*, the United States, the United Kingdom, Germany, France, Italy, Russia, Japan, South Korea and other countries on all continents have provided legal protection for works of applied art. After entering the 21st century, China became a member of the World Trade Organization (WTO) and signed the WTO commitments including the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPs), so it also became a member of TRIPs. TRIPs adopts the provisions of *Berne Convention for the Protection of Literary and Artistic Works* on the protection of works of applied art, and also includes works of applied art into the scope of legal protection. From the current situation of our country's legislation, the works of applied art have not been clearly defined by the intellectual property law, and there are different opinions on its concept in theory and practice. In the face of endless debates in academic circles, China stipulated "works of applied art" in the draft for comments on the revision of the *Copyright Law* in 2014. Although the revised draft endowed works of applied art with the legal concept, it was not passed in the legislation. This paper holds that in order to coordinate the orderly operation of various branches of the intellectual property legal system, it is necessary to clarify the protection of works of applied art in the form of legislation[4]. Clarifying the concept and content of "works of applied art" in the form of law will have positive significance for further clarifying the protection rules of copyright law and improving the predictability of law.
Comparing the current international understanding of the concept of works of applied art, it is found that the mainstream views include the following: some scholars point out that the necessary composition of works of applied art includes practical elements and artistic elements, which can only be called works of applied art if they have both elements at the same time. Take the provision of the *Berne Convention for the Protection of Literary and Artistic Works*

as a typical representative: only the intellectual creative achievements that have both artistic and practical elements of a work can be called a work of applied art[5]. In line with this view, common products that integrate external features and have aesthetic and practical properties, such as clothing, toys, furniture and other products closely related to human life. It is difficult to distinguish the external features determined by product functions and creative elements, so it is also complex to measure their legal nature. Some scholars point out that the relationship between the practical and artistic elements of a work of applied art is not inseparable, and only products with two elements separated are objects protected by law[6]. The U.S. *Copyright Act* is the most representative, defining it as: when designing and manufacturing a product with practical value, if the product has typical features in sculpture, carving and painting, and these features can be separated from the practical elements of the product and exist independently. This product can be called a work of applied Art. In line with this definition, it is common to see artworks printed on practical products, such as bedding with landscape paintings; or to directly make stereoscopic artworks into practical products, such as table lamps made of ancient beauty sculptures. Because the expression of practical value in such products can be separated from artistic creations, this method of judging legal attributes is relatively simpler compared to the previous one. Analyzing the above two understandings of the concept of works of applied art, this paper is more inclined to the first viewpoint, which states that only products with practical elements that cannot be separated from artistic elements can be called works of applied art[7]. To sum up, this paper explains the concept of "works of applied art" as follows: artworks with originality and fixed intellectual expression in some form, both aesthetic and practical, and their modeling can be stereoscopic or planar.

3 THE CHARACTERISTICS OF WORKS OF APPLIED ART AND THE DETERMINATION OF THEIR INDEPENDENT STATUS

Compared with the previous two amendments, it is a new concept endowed in the third amendment draft of Chinese *Copyright Law*. However, the independent status of "works of applied art" cannot be established because there is still no unified expression of meaning. This paper argues that it is necessary to use for reference the relevant foreign legislation and base on the basic principles of copyright law to distinguish it from other easily confused objects of intellectual property law, and objectively express the connection between the artistry and practicality of works of applied art.

3.1 Determination of the Independent Status of Works of Applied Art

Through the above interpretation of the definition of works of applied art, it is concluded that works of applied art protected by copyright law should first meet the following five conditions: "expressiveness", "originality", "scope" "replicability" and "legitimacy" (some scholars also call them "characteristics"[8]). At the same time, it has both practical function and aesthetic significance. The rich content contained in the concept, to a certain extent, is also the embodiment of the characteristics of works of applied art[9]. The feature discussed in this paper is to compare the works of applied art with the objects protected by the relevant intellectual property laws. On the basis of clarifying the confusing concepts, we can make a profound understanding of the connotation of works of applied art from a deeper perspective, and promote the continuous improvement of the legal protection system of the intellectual property law of domestic works of applied art.

First of all, by comparing works of applied art with artworks, it can be seen that artworks come from the creators' creative ability to show their perception and understanding of the world in the form of painting, which determines that they have a strong attachment to the creators. The nature of works is their natural attribute, which should be included in the protection scope of copyright law; however, from the perspective of judicial practice, the legal category of "artworks" is expanded[10], and then works of applied art are introduced into the protection scope of copyright law. As for the relationship between the two, some scholars point out that when defining the legal category of artworks in China, works of applied art are introduced into it, that is, into the scope of copyright law protection; Artworks can be divided into pure artworks and works of applied art. However, this paper believes that there is a connection between the two, but it is not limited to the inclusion relationship in the literal meaning. Regarding "artworks", China's *Enforcement Regulations of the Copyright Law* defines them as follows: calligraphy, painting and sculpture that present aesthetic value through the use of color, line and other means, and their forms can be three-dimensional or planar. It seems that works of applied art should be a kind of artworks, but in fact it is not. As a kind of spatial visual art, the fundamental value of artworks is to provide visual experience to the viewer, without the practical function that works of applied art have. In addition, referring to a document of the World Intellectual Property Organization and UNESCO in December 1986: artworks do not include architectural works, works of applied art, or photographic works. And the *Berne Convention for the Protection of Literary and Artistic Works* also juxtaposes works of applied arts with artworks, and sets the term of protection for works of applied arts at 25 years, distinguishing them from artworks in terms of protection period. In summary, although the current law has included artworks and works of applied art in the scope of protection and both are rich in aesthetic value, there is a fundamental, i.e., whether they are functional or not. International conventions and relevant documents have made it clear that the two are parallel rather than inclusive.

Second, through the comparison of works of applied art and appearance designs, it is found that the appearance design in the current domestic patent law is a work with color and graphics as the design object and specific products as the carrier. Bed sheets with exquisite patterns and lamps with elegant appearance are all appearance designs. However, the appearance design only stresses "beauty" and does not meet the requirements of modeling as a artwork. Therefore, it is

also a table lamp with beautiful shape. The table lamp sculpted into the shape of an ancient beauty meets the establishment conditions of works of applied art. It is also a curtain printed with beautiful patterns. The curtain printed with landscape paintings meets the establishment conditions of works of applied art. Because of their high artistic requirements, their shapes and patterns have met the requirements of artworks. In addition, the appearance designs of industrial products must be able to be manufactured repeatedly in batches through industrial production methods, but works of applied art including the handicarfts of skilled craftsmen are unique and cannot be mass-produced by industry. Through the comparison, it is found that compared with the appearance design, the conditions of works of applied art are higher, so after the legislator brings works of applied art into the protection scope, the future artists and designers can propose to obtain legal protection with works of applied art or appearance designs according to the different standards of the design creation. Considering that there is always a strong connection and similarity between the two, if works of applied art are defined in the copyright law, the provisions of the copyright law on the protection period of works should be observed(25 years from the date of publication). In this situation, it is bound to conflict with the appearance design protection period in the patent law (15 years from the date of application) and even the appearance design patent legal system.

To sum up, there are obvious differences between works of applied art, artworks and appearance designs, which cannot be simply classified into any one of them. Therefore, when discussing the legal protection of works of applied art, it is necessary to provide accurate provisions according to their characteristics[11].

3.2 The Differences between "Practicality" and "Artistry"

First of all, it should be clear that works of applied art are a kind of special works. Such works not only require the "five characteristics" of works protected by copyright law, i.e., they can become works protected by copyright law first. Based on the legal provisions, this paper summarizes scholars' discussions on the characteristics of works in the sense of copyright law, and believes that the characteristics mentioned by scholars are more appropriately referred to as the conditions for the establishment of works. The "five characteristics" should be the conditions for the establishment of works protected by copyright law.

Second, such works should have both practical functions. Compared with ordinary artworks, practical function is a higher requirement for artworks. Therefore, if "five characteristics" conditions are required for ordinary works to be protected by copyright law, then works of applied art need to have "six characteristics ". The "practicality" is integrated with the artistic expression of artworks. For example, the practical function of a brooch in the shape of a branch is to provide decorative clothing for women, and its necessary carrier is the artistic shape. If the product loses its artistic shape, it will disappear, and its practical function will no longer exist. For ordinary products, the practical function is a certain use, useless products do not have the practical function. Under the theory that practical elements and artistic elements can be separated, the curtains with beautiful patterns belong to a kind of works of applied art, but it is not realized that there is no correlation between the practical function of the product and its patterns. Take brooches and curtains as examples. If someone files a lawsuit against the manufacturer of the product because the shapes and patterns used by the manufacturer are piracy and infringement, and the evidence is conclusive, the court will make the following ruling: for the brooch manufacturer, the court will terminate the continuous production, but for the window curtain manufacturer, the court will only prohibit the continuous use of patterns, and will not restrict its continuous production. That is to say, curtain manufacturers can continue production by changing patterns. It can be seen that there are differences in the object of litigation between the two. The former takes the brooch, a work of applied art integrating artistic elements and practical elements, as the object of litigation, while the latter takes the pattern, that is, the artwork printed on the curtain, as the object of litigation, rather than the work of applied art itself.

In the United States, based on the separation of artistic elements and practical elements, works of applied art are included in the scope of legal protection, which is inseparable from the type of legal sources of case law[12]. For a longer period of time, U.S. legislation did not protect works of applied art through copyright legislation, and the formal inclusion of functional works into the protection of copyright law was marked by the enactment of the U.S. *Copyright Act* (1949), and it was not until after the case of Mazer v. Stein(1954) that the principle of separation characteristics and independent existence was established[13]. As a case law country, the reason why the United States adopts the principle of separation of practicality and artistry to protect works of applied art is inseparable from the uniqueness of the objects protected by each separate law in the intellectual property law of the United States compared with other countries. In the provisions of "design patents," U.S. patent law does not explicitly include "practicality" as a requirement, which differs from the provisions of other countries. In the United States, the inventor of a new, original and decorative design relying on the product may apply for a patent right in accordance with the provisions of the *Patent Law*. It can be seen that the necessary conditions for U.S. patent law to grant a design patent are: product, creativity and decoration, but excluding the practical condition. In 1964, the court of customs and patent appeals made clear the following provisions through a judgment: if the design is mainly characterized by practicality rather than decoration, in this case, the design does not fall within the scope of patent law protection. Therefore, it can be inferred that the design protected by the U.S. patent law excludes the works of applied art from the protection scope of this law because it is not practical. Copyright law pays attention to the expression of ideas, and the expression needs to rely on a certain carrier. Works of applied art express artworks through practical products. Therefore, the United States Copyright Law stipulates that artistry and practical products must be separated, which is reasonable according to its own laws.

Third, through the application of language logic and grammatical conventions, if we make a grammatical division of "works of applied art", we will find that "works of applied art" itself is an inseparable noun. Such works can be called works of applied art only when they have the "six characteristics" discussed above and have both artistic elements and practical elements. However, if according to the provisions of the U.S. copyright law, the works of applied art defined by China's copyright law are divided into "practical" and "artworks", that is, practicality is only an attribute of artworks, as long as they are practical, the practicality is beyond question. Fundamentally, this kind of work exists only as a simple and pure artwork, and its use is limited to industrial manufacturing. If we classify them as simple and pure artworks, and also classify them as works of applied art, which undoubtedly expands the scope of legislation.

4 THE DILEMMA OF INTELLECTUAL PROPERTY PROTECTION OF WORKS OF APPLIED ART

With regard to the legislative protection of works of applied art, China still faces certain difficulties at the legislative level, which is due to the fact that the existing copyright laws and regulations in China only focus on artistic expressions and ignore the same legal attributes between pure artworks and works of applied art, and are influenced by the concept and practice of including works of applied art into the scope of copyright legal protection, while ignoring the different aesthetic attributes between the two, thus affecting the scientificity and rationality of legal protection policies.

4.1 Legislative Level-lack of Clear Legal Norms

At present, there are no specific provisions on the protection of works of applied art at the legislative level, and even the name of "works of applied art" is inconsistently used in Chinese laws and regulations and judicial practice: the State Council issues the "13th Five-Year Plan" notice on intellectual property protection and other administrative regulations use the wording of "works of applied art"; in the *Provisions on the Implementation of the International Copyright Treaties*, it is called"foreign works of applied art"; in practice, some judges are often confused about the use of concepts such as "works of applied art" and "practical artworks"[14].

At first, China joined the *Berne Convention for the Protection of Literary and Artistic Works* in 1992, but what conflicts with the convention is the *Copyright Law* (1990 edition) implemented at that time in China. Considering that it is not easy to distinguish from pure artworks, industrial designs and arts and crafts, it is not clearly stipulated that works of applied art should be listed as the object of copyright and protected, and the *Berne Convention for the Protection of Literary and Artistic Works* requires China to fulfill the obligation to protect such works.

In the absence of the legal basis protected by the *Copyright Law* (according to article 7 of The *Copyright Law* of China in 1990 edition, the application of industrial property law takes precedence over copyright law in the legal system for protection of scientific and technological achievements), some scholars even put forward the conclusion: the works of applied art cannot be protected by copyright law, and it is suggested to regulate them by *patent law*. However, among the three types of objects protected by the Patent Law, only the appearance design is related to the works of applied art. This law set for design of the protection period for 15 years, which is far from the minimum protection period (25 years) set by the convention. In view of this, in order to follow the convention and protect the legitimate rights and interests of copyright owners of foreign works, China has promulgated and implemented the *Provisions for the Implementation of the International Copyright Treaties* in 1992, which sets a protection period of 25 years for foreign works of applied art, starting from the date of completion of the work. Animation image design and other artworks as industrial products are excluded from application. Since then, China has included works of applied art into the scope of legal protection for the first time. However, according to the legislative purpose and content of this regulation, works of applied art created by Chinese nationals are still not protected and creators do not enjoy copyright.

In the process of the second amendment of the *Copyright Law*, it was considered whether to protect works of applied art through legislation. In the third amendment of the *Copyright Law*, works of applied were included in the scope of objects to be protected in the exposure draft. In response to the amendment of the *Copyright Law*, the *Copyright Law (Revised Draft for Examination)* promulgated in China in 2014 explicitly included works of applied art as a type of work in the form of enumeration, which indicated that the legislators were inclined to protect works of applied art by copyright[15]. But because it is difficult to clarify the relationship between the pure artworks and works of applied art, design and works of applied art, works of craft and works of applied art, and it is also difficult to distinguish works of applied art from designs and works of craft, so the issue of protection of works of applied art is still not clarified through legal forms in the *Copyright Law (The Third Amendment)* in 2020. In addition, the current *Copyright Law* in China lists the types of works that can be granted copyright, and the scope of protection does not include all the contents of the works. Facts, emotions, thoughts, rules and contents related to the public sphere are not included in the scope of protection.

4.2 Judicial Level-inconsistent Understanding in Practice

Although the legal protection of works of applied art is not clearly defined in the current legislation, there have been some disputes about such works in the judicial field in China. According to the relevant data of China Judgments Online, there were 180 court cases concerning works of applied art from 2014 to 2023, many of which were concluded in the second instance and the retrial procedure. It can be seen that since there is no relatively unified protection standard for works of applied art as the basis in China, the parties still have disputes over the verdict and even appeal or apply to the High Court for a retrial to resolve the disputes.

Those that attract social and media attention, such as "the case of Lego Company v. Guangdong Small White Dragon Toy Company for copyright infringement", "the case of Italian OKBABY Company v. Cixi Jiabao Company to children's commode copyright infringement" and "the case of Hu Sansan v. Qiu Haisuo and China Art Gallery for infringement of artistic clothing works". These cases emerge in endlessly, but due to lack of specific legal basis, the courts accepting this kind of cases have complicated reasons and different results. The dispute over the copyright of Lego and Coco Toy blocks in 2002 is the first time that the works of applied art created by foreign citizens are included into the scope of legal protection through judicial decision in the field of judicial practice in China, which is the concrete practice of the *Provisions of the Implementation of the International Copyright Treaties* in China. This case has a milestone significance in China's intellectual property disputes. According to the final verdict made by the court, it confirms the "super-national treatment" granted to the creators of foreign practical works of art by Chinese laws and regulations. However, in some specific cases, it was judged that the protection period of foreign works of applied art was only 25 years, which was based on the relevant provisions of the *Provisions on the Implementation of International Copyright Treaties*. This period was significantly less than the protection period of 50 years before the death of the author of the artworks, which violated the "national treatment" in the TRIPs, such as the Italian OKBABY children's commode case and the Hu Sansan clothing design case. The courts tried to avoid the judgment of works of applied art, took a detour, identified the works involved as artworks, and made a judgment. Most of the judgments are based on the relevant provisions of the Chinese *Enforcement Regulations of Copyright Law*, which classifies works of applied art as a kind of artworks[16]. "The case of Crosplus Company in Shanghai v. Beijing Zhongrong Hengsheng Industry Company. and Nanjing Mengyang Furniture Sales Center infringement of copyright dispute" is the 28th batch of guiding cases issued by the Supreme People's Court in 2021. After hearing the case, the court found that the "Tang Yun Cloakroom Furniture" of Crosplus Company, as a three-dimensional modeling artwork with both practical function and aesthetic significance, belonged to the artworks protected by the copyright law. The case clarifies that the copyright law protects the artistry rather than the practicality of works of applied art.

By analyzing the verdicts in the above cases, we conclude that at the present stage, the protection of works of applied art by domestic copyright law is relatively confusing, and in judicial practice, judicial officers are unable to accurately grasp the concept, connotation and protection mode of works of applied art, and their judgement criteria are mostly based on reasoning, thus making different verdicts for the same cases[17]. This is ultimately the result of inconsistent understanding of the concept of works of applied art by judicial officers, or they who do not distinguish between practical functions and directly examine the originality of artistic elements, or only focus on demonstrating the legitimacy of the incorporation of works of applied art into artworks. The paper holds that it is particularly important to clarify the concept and connotation of artworks and works of applied art in the process of hearing cases, and adopt differentiated protection strategies from the characteristics of the works. Unlike artworks which can be protected by copyright laws with their entire contents, the artistic elements in works of applied art should rightfully be included in the protection of copyright laws, and in addition to the originality element of artistic components of artworks, the practical functions possessed by works of applied art should also be examined. Therefore, in judicial practice, works of applied art should not be regulated according to the classification of artworks.

At the same time, from the perspective of the current legislative system, works of applied art of Chinese citizens have not been clearly defined in legal form, which makes domestic works and foreign works "double treated", frustrates the enthusiasm of domestic creators and damages the interests of Chinese intellectual property rights holders[18].

5 SUGGESTIONS ON IMPROVING THE INTELLECTUAL PROPERTY PROTECTION OF WORKS OF APPLIED ART

5.1 Apply the Principle of Selective Protection

As is stated above, works of applied art meet the conditions for the establishment of works protected by copyright law, and at the same time, they also have a typical characteristic that other works do not have, namely, practical value. Therefore, if they are only protected by copyright law, it seems to be against the characteristics of such works. However, if they are also protected through the application of the patent law, the creators can enjoy copyrights and patent rights at the same time and get the double protection. It will violate the principle of fairness and harm the interests of the others and even the public interests because of excessive protection[19]. Therefore, aiming at the problem of how to protect works of applied art, this paper proposes selective protection for works of applied art and gives creators the right to choose between copyright law and patent law.

For those who propose to be protected by copyright law in the form of works of applied art, the applicant shall submit a letter of commitment. The reason for the adoption of the letter of commitment is to consider the adoption of creative protectionism in the copyright law, that is, no registration is required, as long as the work is completed independently and meets the "five characteristics", the copyright can be obtained. Once the designer has made a written promise, it means that they enjoy the copyrights of their works, which indirectly eliminates the possibility of obtaining patent rights[20].

The reason why this paper adopts the letter of commitment is to consider that in reality, some copyright owners who have obtained copyright of works of applied art will apply for design patents before the expiration of the limited period of rights in order to obtain more benefits, so that their rights can be extended indefinitely.

For those who have proposed to protect the design patent by the patent law at the beginning, if it is found that the shape

meets the establishment conditions of the artworks after the application is submitted, they can apply to the Patent Office for revocation of the patent right before the patent is granted. And within one month from the date of issuance of the cancellation notice, designers shall be given the right to submit an application for a letter of commitment for works of applied art to the National Copyright Administration. Once submitted, the application for patent protection shall be deemed to be waived.

5.2 Applicable Situations of Copyright or Patent Protection

After the completion of works of applied art, this paper puts forward the following suggestions on the applicable situations of creators' copyright or patent protection for their works.

First, from the perspective of work types, if the work of applied art is mainly hand-made by the creator and designer, this paper holds that it is more appropriate to adopt the copyright law protection model. Because the creative activity is closely related to the state of mind of the creator at that time, the equipment used and the environment in which the creator is located, it is difficult for the creator to make a second identical practical handicraft, not to mention mass production. Therefore, it is suggested that the creator should consider using copyright law to protect the practical handicraft.

Second, in terms of the degree of originality, the creativity of a work protected by the copyright law only requires originality. Even if the creative degree of the work is not high, or there is a certain similarity with the existing work, as long as the designer completed the creation independently, the copyright law will protect it. The design patent protected by the patent law requires originality, which is the first design creation completed by the creator of works of applied art. And it is highly original, novel compared with the existing design, convenient for mass production in industry and can obtain the protection of the patent law[21].

Third, in terms of the strength of protection, under the protection mode of copyright law, works of applied art are protected from the date of their creation, without excluding other independent creators from completing the same creation. In contrast, the patent law protection of the design patent has exclusivity. Without the authorization of the patentee, no one has the right to manufacture, sell, import or offer for sell products with the same design. The difference in the strength of legal protection determines the protection period granted by law. As mentioned above, most foreign countries usually set the term of copyright protection for works of applied art as 25 years, and the starting date is the date of completion of the work[22]; while the design patent has a shorter period of protection. Chinese patent law provides for 15 years from the date of patent application. This requires the designer to weigh up and make reasonable choice.

5.3 Clear the Standards of Separation of Practicality and Artistry

In the judicial practice of our country, there is no specific legal basis for the continuous reform of the law. However this method does not fill the gap well, but produces different judgment standards. In the revision of the *Copyright Law*, we can bring the standard of works of applied art into the consideration of defining its concept. As the basic principle of Chinese *Copyright Law* is to protect only the form of expression, the significant difference between it and the *Patent Law* is that its scope of protection does not cover the subjective aspects such as the feelings and thoughts of designers. If it is only clear that a work of applied art has artistic elements and practical elements, but there is no corresponding standard of whether it is separated, it will result in the right concurrence or repeated protection in judicial practice.

For works of applied art, the laws of most European countries clearly stipulate that the condition of copyright or copyright protection for works is the integration of their artistic and practical characteristics. Meanwhile, the domestic academic research field also points out that if the two characteristics are separated, for the artistic elements of the works, they should be attributed to a kind of artworks to be protected. Therefore, the paper holds that, in order to prevent the practicality in the public domain from being affected by copyright protection, it is suggested that the specific provisions of Article 101 of the U.S. *Copyright Law* can be referred to, i.e., the standard of separating"practicality" and "artistry" should be taken as the legal basis for the specific identification of works of applied art in judicial practice. This is not only the development trend to adapt to judicial practice, but also will help to ensure that the court can make a fair judgment when handling infringement cases of works of applied art.

In addition, in judicial practice, it is not rigorous enough for the court to separate practicality and artistry without emphasizing whether these two characteristics can exist independently. However, if it is required that the practicality and artistry of works of applied art should be both separated and independent of each other, this too strict standard also does not conform to the basic principle that the scope of copyright protection does not include practicability. Whether the practicality can exist independently or whether the articles are also practical after separation are all issues that need to be studied in the further revision of the copyright law. In the case of introducing works of applied art into the protection scope of copyright law, we should specify the establishment conditions for the independent existence of artistic elements of works. In addition to the fact that artistry is separated from practicality and can exist independently in the "physical separation", it should also be shown that on the basis of separation, the artistic elements in works of applied art can continue to exist in other media or exist alone, which constitutes a complete separation process, and such a judgment standard is more reasonable.

6 CONCLUSION

The protection of intellectual property rights of works of applied art has always been a controversial issue, and it is also the problem to be solved in this paper. There is a great disagreement between China's theoretical and practical circles on the concept, characteristics, relationships with artworks and designs, as well as the independence of the status of the works themselves, which is obviously not conducive to the effective protection of works of applied art. In this regard, this paper proposes that works of applied art are intellectual expressions with originality and can be fixed in some form, which are both aesthetic and practical, and should be treated as independent objects for legal protection of intellectual property. On the other hand, in view of some problems in the legislation and judicial practice, this paper proposes to apply the principle of selective protection and to clarify the standard of separating practicality and artistry in the legislation.

On this basis, the following two factors should be considered in the future: the first is the standard of selective protection of works of applied art. Since double protection is against the principle of fairness, works of applied art should be protected by copyright or patent right. Therefore, it is particularly important to establish the judgment standard for selective protection. This paper only enumerates several common applicable cases, which should be combined with the actual situation of our country in the future to form a systematic applicable standard. The second is the standard of separating practicality and artistry. Separating the practicability and artistry of works of applied art can effectively avoid the occurrence of rights concurrence or repeated protection in judicial practice. In the future, we should take the general principles of intellectual property law as the starting point, fully consider the judgment basis in judicial practice and the principles of extraterritorial treatment, and strive to integrate a set of objective evaluation standards.

COMPETING INTERESTS

The authors have no relevant financial or non-financial interests to disclose.

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