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Definition and liability of warranty obligations in technology patent assignment contracts in China

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Summary: 1. Introduction. 2. The normative basis and practical dilemmas of warranty obligations in patent assignment contracts. 2.1. Current regulatory basis for patent assignment warranty obligations. 2.2. Main manifestations of confusion in types of defects in judicial practice. 2.3. The tension between patent intangibility and the expectation of substantive warranty. 3. Typological definition of warranty obligations in patent assignment contracts. 3.1. Defects in legal validity: Reasonable limitation of the transferor's liability. 3.2. Defects in the authenticity of rights: Static obligations as the core of statutory guarantees. 3.3. Technological utilization defects: From "warranty on defects" to the distinction between risk perception. 4. A defect warranty liability structure guided by the reasonable allocation of transaction risks. 4.1. A shift in explanation from formal guarantees to substantive risk allocation. 4.2 The dual structure of transferor's obligations: Guarantee and warning. 4.3. The reasonable scope of autonomy of will: Disclosure, pricing, and liability allocation. 5. Conclusion. 6. References.

Abstract: In the practice of technology patent transfer, patent rights, as core intangible assets, often lead to disputes over guarantee obligations due to the uncertainty of rights, the variability of legal effect, and dependence on technology implementation. Current rules often conflate the authenticity of rights, legal effect, and the risk of technology utilization, resulting in excessive liability for the assignor and an imbalance in risk allocation. This article, grounded in China's current legal system and based on the Contract Law section of the Civil Code of the People's

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Republic of China, the Patent Law of the People's Republic of China, and relevant judicial interpretations, explores the boundary definition and liability allocation mechanism of warranty obligations in patent assignment contracts, and advocates for a categorized distinction: warranty of ownership integrity is a core statutory obligation and cannot be completely exempted; liability for legal effect risk is limited to undisclosed known or should-know defects; and the feasibility of technology should be stipulated in the contract. On this basis, a dual obligation structure of "static warranty of the authenticity of rights and dynamic early warning of known risks" is constructed. Through tiered disclosure and risk pricing, the autonomy of the parties is respected, and the generalization of liability is avoided, thereby improving transaction security, judicial predictability, and institutional rationality.

Keywords: Patent Transfer, Warranty Obligations, Authenticity of Rights, Legal Validity Risks, Allocation of Transaction Risks

Resumo: Na prática de transferência de patentes de tecnologia, os direitos de patente, como ativos intangíveis essenciais, frequentemente levam a disputas sobre obrigações de garantia devido à incerteza dos direitos, à variabilidade do efeito jurídico e à dependência da implementação da tecnologia. As normas vigentes muitas vezes confundem a autenticidade dos direitos, o efeito jurídico e o risco da utilização da tecnologia, resultando em responsabilidade excessiva para o cedente e em um desequilíbrio na alocação de riscos. Com base no Código Civil e na Lei de Patentes, este artigo explora os limites razoáveis das obrigações de garantia e defende uma distinção categorizada: a garantia da integridade da titularidade é uma obrigação legal essencial e não pode ser totalmente dispensada; a responsabilidade pelo risco do efeito jurídico se limita a defeitos conhecidos ou que deveriam ser conhecidos, porém não divulgados; e a viabilidade da tecnologia deve ser estipulada no contrato. Com base nisso, constrói-se uma estrutura de dupla obrigação de "garantia estática da autenticidade dos direitos e alerta precoce dinâmico de riscos conhecidos". Por meio da divulgação escalonada e da precificação de riscos, a autonomia das partes é respeitada e a generalização da responsabilidade é evitada, melhorando, assim, a segurança da transação, a previsibilidade judicial e a racionalidade institucional.

Palavras-chave: Transferência de patente, Obrigações de garantia, Autenticidade de direitos, Riscos de validade jurídica, Alocação de riscos de transação

1. Introduction

With the increasing market-based allocation of technological inputs, patent transfers have become one of the main methods of facilitating the movement and commercialisation of technology. The term "patent" as used in this article refers only to invention and utility model patents as stipulated in Article 2 of the Patent Law, collectively known as "technology patents". Patents are very different from other forms of property, as they are classified as intangible assets with highly institutionalised uncertainty and dynamism regarding³; their ownership status, their legal validity, and their conditions of use within technology⁴. Therefore, there has been a longstanding controversy over the application of warranty obligations in patent assignment contracts. One way in which this issue can be analysed is from a normative viewpoint. Currently, most countries regulate patent transfers via their

³ HEGDE, D., HERKENHOFF, K., & ZHU, C. "Patent publication and innovation", *Journal of Political Economy*, V. 131, nº 7, 2023, p. 1845-1903. DOI: 10.1086/723636

⁴ YANG, X. "Research on the anti-unfair competition law regulation of malicious patent litigation", *Open Journal of Legal Science*, V. 13, nº 5, 2025, p. 1043-1049. DOI: 10.12677/ojls.2025.135148

contract laws' general warranty rules⁵. However, these general warranty rules provide little information related specifically to patents. In judicial practice, confusion persists in distinguishing between legal issues arising from defects in patent ownership, invalidation of patents, and defects in use, such as the difficulty in implementing the technology or the inability to achieve expected economic benefits⁶. This issue leads to controversial rulings regarding whether the transferor should bear warranty liability and the specific scope of that liability. In addition to the inconsistency mentioned above, it also creates confusion regarding the parties' respective risks in a patent transaction. Given this environment, this article addresses the following research question: Under the current legal framework, the blurred boundaries of the transferor's warranty obligations in patent assignment contracts lead to confusion in judicial practice regarding the determination of liability for defects in rights, changes in legal validity, and risks associated with technology implementation. This, in turn, results in inconsistent judgment standards and unstable transaction expectations. The crux of the problem lies in the fact that Article 612 of the Civil Code, concerning the general provisions on warranty against defects in rights, fails to fully consider the unique characteristics of patents as administratively authorized intangible property rights. Specifically, their validity is presumed but can be invalidated, and their technological value depends on the conditions of implementation rather than the right itself. Including all adverse consequences related to patents within the scope of statutory warranties not only violates the principle of risk-bearing but may also inhibit the activity of technology transactions. Conversely, allowing complete freedom in contracts can easily induce moral hazard due to information asymmetry. This institutional tension has already resulted in adverse consequences such as inconsistent judgments in similar cases, an imbalance in the burden of proof for parties, and confusion in the determination of the validity of contract clauses, severely weakening the efficiency of patent market allocation and the uniformity of legal application. Clarifying this issue is of significant practical value for activating existing patent resources, promoting the transformation of scientific and technological achievements, and even optimizing the legal environment for the national innovation system.

Given the ambiguity of regulations and the confusion of types in judicial practice, this paper aims to clarify the reasonable boundaries of warranty obligations in patent assignment contracts through systematic interpretation and typological construction, and to construct a liability structure oriented towards the reasonable allocation of risks. The overall goal of this study is to reconstruct the interpretative path of warranty obligations in patent assignment within the normative framework of the Civil Code of the People's Republic of China and the Patent Law, avoiding the conflation of defects in rights, changes in legal validity, and risks of technology implementation, thereby achieving a precise narrowing of the scope of warranty liability and a rational return to the function of the system. Specific objectives mainly include:

(1) This paper distinguishes between three types of risks: "defects in the authenticity of rights", "defects in legal validity", and "defects in technological application". It defines the legal attributes and liability bases for each, clarifying that the guarantee of ownership integrity is an inescapable statutory obligation. Liability for legal validity risks is based on the premise of "known or should have been known but not disclosed". Technological feasibility is, in principle, subject to contractual agreement.

⁵ EISENBERG, R. S. "Patents and the progress of science: Exclusive rights and experimental use", *The University of Chicago Law Review*, V. 56, n^o3, 1989, p. 1017-1086. DOI: 10.2307/1599761

⁶ SMITH, H. E. "Intellectual property as property: Delineating entitlements in information", *Yale LJ*, V. 116, 2006, p. 1742-1822. Available at: https://yalelawjournal.org/pdf/567_ihvzbhf9.pdf (accessed on 15 December 2025).

(2) This paper proposes a dual obligation structure of static guarantee of the authenticity of rights and dynamic warning of known risks, shifting the transferor's liability from an outcome-oriented absolute guarantee to a process-oriented obligation of information disclosure and good faith. This aligns with the administrative authorization nature of patent rights, which is "presumed valid but revocable".

(3) Above the statutory guarantee threshold, this paper argues for the legitimacy and operational space for parties to autonomously allocate residual risks through contractual mechanisms such as tiered disclosure, risk pricing, and liability limitation. This provides judicial guidance that balances transaction security and autonomy of will for judicial practice.

Based on legal dogmatics, this study combines normative analysis and logical deduction. Within the framework of current Chinese law, and in accordance with the Civil Code of the People's Republic of China and the Patent Law of the People's Republic of China, it conducts a doctrinal analysis of the normative structure of warranty obligations in technology patent transfer. Through a review of judicial precedents, academic literature, and current legal norms, it identifies typical patterns and common problems of confusion in the application of warranty obligations in practice. Guided by legal principles and institutional objectives, and starting from the inherent attributes of patent rights such as "intangibility", "presumed validity", and "institutional risk", it constructs a path for categorizing and narrowing the interpretation of warranty obligations. It argues that the interpretation of warranty obligations should not deviate from the inherent logic of the patent system. Within the framework of the Civil Code's Contract Law, the warranty obligation should be interpreted in a categorized and restrictive manner, taking into account the administrative nature of patent rights as "presumed valid but reversible": the transferor bears an inescapable statutory warranty liability for the authenticity of the ownership and disposal rights; regarding the stability of the patent's legal status, liability for breach of contract only arises when the transferor knowingly or should have known of the relevant risks but failed to disclose them; and regarding the implementability of the technology, judgment should be made according to the specific contractual agreement. By distinguishing between the two types of risks—authenticity of rights and legal stability—and establishing a warranty liability structure oriented towards the reasonable allocation of transaction risks, a rational allocation of risks can be achieved.

2. The normative basis and practical dilemmas of warranty obligations in patent assignment contracts

2.1. Current regulatory basis for patent assignment warranty obligations

The effective transfer of patent rights is based on an understanding of their core legal attributes. According to the Patent Law of the People's Republic of China and related theories, patent rights mainly possess four key characteristics: First, exclusivity, meaning that the patentee enjoys the exclusive right to exclude others from implementing their technical solutions without permission (Article 11 of the Patent Law of the People's Republic of China). This attribute determines that the economic value of patent rights is highly dependent on the effective existence and undisputed status of the rights. Second, intangibility, as patent rights are not based on a physical carrier, and their boundaries need to be determined through the interpretation of the claims. This makes it difficult to intuitively judge whether the rights have defects or cover specific technologies, exacerbating the information disadvantage of the transferee. Third, transferability, as Article 10 of the Patent Law stipulates that patent rights can be transferred according to law, making them an important target for the market-based allocation of technological elements. Fourth, registration requirements, as the creation and transfer of patent rights require

authorization or registration announcement by the patent administration department under the State Council (Articles 10 and 34 of the Patent Law), which has a strong administrative confirmation character.

However, registration only has the effect of publicity and does not absolutely guarantee the validity of the rights. The "patent assignment agreement" discussed in this article is fundamentally different from the broader "technology transfer agreement", and the two should not be confused in terms of legal nature, scope of subject matter, and regulatory basis. A patent assignment agreement specifically refers to a contract with the "patent right" itself as stipulated in Article 10 of the Patent Law of the People's Republic of China as its subject matter, and its core lies in the transfer of patent ownership. According to this article, "When assigning a patent right, the parties shall enter into a written contract and register it with the patent administration department under the State Council, which shall then publish it. The assignment of the patent right shall take effect from the date of registration". Thus, patent assignment is a formal act, with registration as a condition for effectiveness, and it only involves the specific intangible property right of a granted patent. In contrast, a technology transfer agreement falls under the category of "technology contracts" regulated by Article 862 of the Civil Code. Its subject matter includes not only patent rights but may also cover undisclosed or unauthorized technical information, such as patent application rights, know-how, technical solutions, and technological processes.

In China's current legal system, the normative basis for the warranty obligation in patent transfer contracts mainly stems from the general provisions of the Contract Law section of the Civil Code of the People's Republic of China regarding technology contracts and warranties of defect, with Article 870 being the core. This article stipulates: "The transferor of a technology transfer contract and the licensor of a technology licensing contract shall guarantee that they are the legal owner of the technology provided, and guarantee that the technology provided is complete, error-free, and effective, and can achieve the agreed objectives". Although this article does not directly use the term "warranty of defect", its expressions such as "guaranteeing...legal ownership" and "complete, error-free, and effective" essentially constitute a dual guarantee obligation for the technology transferor at both the rights and technology levels, and can be regarded as the direct legal basis for warranty liability in patent transfer contracts.

The words "legal ownership" when literally interpreted refer to clarity regarding the ownership of property and the assurance of the right to dispose of that property, so as to avert conflicts between co-owners, liens or encumbrances and other defects of title, whereas "complete, without error and effective", denotes the ability to implement the technical content and the stability of the status of the patent; this last term also implicitly implies an equal amount of assurance or commitment to both the technical effectiveness of the patent. In terms of the definitions, when the word "valid" is used, does it mean that the patent had not been voided by formal means on the day of the assignment, or is it expected to be valid throughout the life of the contract? When the term "error-free" is used, does it mean that the technical solution has no technical faults, or does it mean that it is guaranteed to be industrialized? This flexibility in language and legal interpretation offers the judicial application quite a bit of latitude in judgments.

From a purposive interpretation perspective, Article 870 of the Civil Code seeks to balance the risk associated with the information asymmetry of technology transactions and protect a transferee's reasonable expectations as to the usability of the technology, while at the same time not completely transferring the institutional risks of patent protection to the transferor. Patent rights granted by the patent administration department under the State Council based on administrative procedure are not absolute or permanent in nature, and their legal status is always

subject to the possibility of being challenged by third parties⁷. Article 45 of the Patent Law stipulates that "from the date of the announcement of the grant of a patent right by the patent administration department under the State Council, any entity or individual who believes that the grant of the patent right does not comply with the relevant provisions of this Law may request the patent administration department under the State Council to declare the patent right invalid". Article 47 further clarifies that "a patent right declared invalid shall be deemed to have never existed from the beginning". This system design indicates that the validity of a patent right is only a rebuttable presumption, not an indisputably established right⁸.

In patent infringement civil litigation, the people's court generally does not examine the validity of the patent right, but presumes that the patent right is valid. If the patentee claims infringement liability based on this, the people's court should accept the case. This ruling reveals that in civil disputes, the legal validity of patent rights has procedural independence and presumed validity. This judicially confirms that the value and risk of patent rights inherently include the possibility of being negated by subsequent administrative procedures. Therefore, interpreting the "validity" guarantee in a patent assignment contract as an absolute guarantee of a future certainty is inconsistent with the legislative system and contradicts the essence of patent rights as understood in judicial practice.

Article 612 of the Civil Code stipulates the seller's obligation to guarantee against defects in title in sales contracts (the seller has the obligation to ensure that no third party has any rights to the delivered object, unless otherwise provided by law). This article inherits the provisions on warranty against defects in title from Article 150 of the original Contract Law. Although it does not directly apply to technology contracts, the principle of "integrity of rights" it establishes can be used as a reference⁹. In patent assignment, this principle should be understood as: the assignor must guarantee that it has full disposal rights over the assigned patent and that there are no undisclosed encumbrances that could prevent the assignee from exercising the patent rights¹⁰. Such obligations are statutory and mandatory and cannot be completely exempted through standard clauses such as "as is" assignments; otherwise, the basic transaction security of the assignee would be undermined¹¹. Therefore, it is evident that under the current Civil Code framework, the warranty obligation in patent assignment contracts has a normative basis. However, this basis is general and does not provide detailed distinctions to address the specific characteristics of the patent system. This is precisely a key reason why, in practice, defects in rights, defects in legal validity, and risks of technology utilization are easily confused and mishandled.

2.2. Main manifestations of confusion in types of defects in judicial practice

Under the current legal framework, judicial practice generally follows Article 870 of the Civil Code regarding the basic requirement that the technology transferor

⁷ MAZAHERI KUHANESTANI, R., & NASERI, S. "A study over patent assignment agreement", *The Judiciarys Law Journal*, V. 84, n° 109, 2020, p. 191-226.

⁸ SUN, H. "Post-grant patent invalidation in China and in the United States, Europe, and Japan: A comparative study", *Fordham Intell. Prop. Media & Ent. LJ*, V. 15, 2004, p. 273-332. Available at: <https://ir.lawnet.fordham.edu/iplj/vol15/iss1/5> (accessed on 15 December 2025).

⁹ GUO, P., & LI, L. "The reform of contract rules in china's new civil code: Successes or pitfalls", *European Journal of Law Reform*, V. 23, n° 2, 2021, p. 242-263. DOI: 10.5553/EJLR/138723702021023002005

¹⁰ HERBOTS, J. H. "The Chinese new Civil Code and the law of contract", *China-EU Law Journal*, V. 7, n° 1, 2021, p. 39-49. DOI: 10.1007/s12689-021-00090-6

¹¹ XU, D., & ZHANG, E. "On the Reform Path of my country's Patent Confirmation System: From "Administrative Unitary System" to "Administrative and Judicial Dual System"", *Journal of Chongqing University (Social Sciences Edition)*, V. 28, n° 2, 2022, p. 183-194. DOI: 10.11835/j.issn.1008-5831.fx.2021.09.002

"guarantee the integrity, accuracy, and validity of the technology" when applying the warranty obligation in patent assignment contracts. However, in specific judgments, the understanding of the connotation of "defect" tends to be somewhat broad. This is mainly manifested in the difficulty of fully distinguishing between different situations, such as patent invalidation, ownership disputes, and the inability to actually implement the technology in terms of liability determination, and uniformly categorizing them into the category of breach of warranty obligation, thus applying similar consequences of breach of contract. This approach is not entirely compatible with the characteristics of the patent system and the basic principles of contract law in terms of risk allocation and liability boundaries.

In cases involving patent invalidation, using the "subsequent invalidation" of the patent as the basis for determining the transferor's breach of contract is formally consistent with the wording of the article, but it fails to fully consider the legal attributes of patent rights. That is, patent rights are generated through administrative authorization and have legal effect before being legally declared invalid. The transferee should be aware of the possibility of challenge at the time of the transaction. The Supreme People's Court has indicated in relevant precedents that if the transferor has not concealed receiving an invalidation request and there is no evidence that they were aware of obvious grounds for invalidation, it is inappropriate to conclude that they have breached the contract simply because the patent was subsequently invalidated¹². In other words, the warranty obligations under current law are not guarantees of "perpetual validity", but should be judged in conjunction with whether the transferor has fulfilled their reasonable duty of care and information disclosure obligations¹³. Ignoring this premise risks the unduly transferring institutional risks that should be assessed by market participants themselves to the transferor.

At the international level, Articles 41 and 42 of the United Nations Convention on Contracts for the International Sale of Goods (CISG) stipulate the seller's warranty obligation against "rights or claims of third parties", but explicitly limit this obligation to the seller's knowledge or reasonable knowledge at the time of contracting, and does not cover intellectual property claims outside the buyer's place of business (CISG Article 42, paragraph 1). This "subjective liability + territorial limitation" model reflects a reasonable exclusion of uncontrollable future risks and is inherently consistent with the interpretation direction of Article 612 of the Civil Code, which combines the principle of good faith. Similarly, Article 4:103 of the Principles of European Contract Law (PECL) also stipulates that "the seller is liable for warranty against third-party rights that he knew or was unaware of due to gross negligence". This position echoes the institutional arrangement of Article 47 of the Patent Law, which states that "invalidation decisions have no retroactive effect on performed assignment contracts".

Regarding the handling of ownership defects and obstacles to technology implementation, in cases where co-owners have not agreed to the transfer or the patent has been granted an exclusive license, ownership defects directly hinder the transferee's full exercise of the patent and are naturally covered by the "lawful ownership" requirement of Article 870 of the Civil Code. This is consistent with the spirit of Article 22 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Technology Contract Dispute Cases (Fa Shi [2020] No. 19), which states that the warranty against defects in

¹² JIANG, Q, & ZHU, X. "The process mechanism of patentee's self-initiated invalidation declaration: A multi-case study based on grounded theory", *Research and Development Management*, V. 34, n° 5, 2023, p. 179-190. DOI: 10.13581/j.cnki.rdm.20211170

¹³ GAO, S. "Application and Limitations of the Subordination Rule of Security under the Civil Code", *Jurisprudence*, V. 464, n.° 7, 2022, p. 3-19. Available at: <https://qikan.cqvip.com/Qikan/Article/Detail?id=7102252536> (accessed on 15 December 2025).

technology contracts should be judged comprehensively in conjunction with the "legality and clarity of ownership of the technological achievements". Judicial practice has largely reached a consensus on this, and the determination of liability is relatively clear. A patent itself is merely legal protection for a technical solution and does not necessarily include all the technical details or commercial feasibility guarantees required for complete implementation¹⁴. However, in cases where the technology cannot be implemented, lacks industrialization conditions, or fails to achieve the expected results, directly determining that the transferor has violated the "complete and error-free" obligation equates implementation obstacles with statutory warranty defects, which may exceed the reasonable interpretation scope of Article 870 of the Civil Code and contradicts the basic principle of Article 509 of the Civil Code regarding determining the content of obligations according to contractual agreements.

The conflation of different types of risks in judicial practice is a result-oriented interpretation of general clauses in the absence of clear rules for distinguishing between types. While the intention is good, aiming to unify judicial standards, this interpretative approach may objectively lead to an expansion of the scope of guarantee liability and a one-way concentration of risk in terms of liability attribution and risk allocation. On the one hand, the transferor may be expected to assume near-outcome guarantees regarding the validity, stability, and even technical feasibility of the patent; on the other hand, the space for parties to pre-allocate risks through contracts may be compressed as a result.

2.3. The tension between patent intangibility and the expectation of substantive warranty

Based on normative analysis and judicial practice, it can be further observed that the trend of increasingly broad and confused application of warranty liability in patent assignment contracts stems from a structural tension between the unique attributes of patents as the subject of transactions and the expectation of "outcome-based guarantees" derived from traditional tangible goods sales. As a typical intangible asset, patents differ significantly from tangible goods in their form of rights and transaction logic. This characteristic is often misinterpreted in judicial practice as a legitimate basis for requiring transferors to assume "outcome-oriented" warranty obligations, thus creating a deep-seated institutional incentive. However, this practice is inherently in conflict with the operating mechanism of the patent system itself¹⁵. The root of this conflict lies in the misunderstanding of the essential attributes of patent rights during the application of law, leading to the improper expansion or misplacement of the warranty function¹⁶. Additionally, multiple procedures exist to establish the validity of a patent¹⁷. The dynamic nature of patents also heightens the disconnect between an expectation of some form of "guaranteed" result from the transaction with the patent assignment. Given that the legal status of a patent is not constant and is subject to updating based on new evidence, or new rules/laws, or

¹⁴ BIAN, R. "Explaining the 'low and unexplainable' patent damages in China: An empirical analysis of 992 judicial opinions", *Queen Mary Journal of Intellectual Property*, V. 14, nº 4, 2024, p. 405-438. DOI: 10.4337/qmjip.2024.04.03

¹⁵ MA, Z. "On the main mission of the intellectual property system: promoting the use of intellectual property", *Social Sciences*, V. 4, nº 1, 2021, p. 116-128. Available at: <https://www.cnki.com.cn/Article/CJFDTotal-SZKX202101010.htm> (accessed on 15 December 2025).

¹⁶ MAO, H. "The economics of China's patent system: from interdisciplinary integration to scientific decision-making", *Studies in Science of Science*, V. 38, nº 11, 2020, p. 1976-1986. DOI: 10.16192/j.cnki.1003-2053.2020.11.007

¹⁷ LIU, J. "The Construction of Judicial Adjudication System for Patent Validity in my country", *Journal of Shenzhen University (Humanities and Social Sciences Edition)*, V. 41, nº 3, 2024, p. 110-120. Available at: <https://xb.szu.edu.cn/EN/Y2024/V41/I3/110> (accessed on 15 December 2025).

technology change¹⁸. These changes are an expected consequence of how the Patent system operates, not a sign of defects on the part of the transferor¹⁹.

Including all such dynamic risks within the scope of guarantees is tantamount to requiring the transferor to bear guarantee liability for uncontrollable future legal facts. This exceeds the reasonable interpretation of Article 870 of the Civil Code, which guarantees the "validity of technology". "Validity" in this article should be understood as possessing a legally valid state at the time of transfer and having no known material defects, rather than a continuous guarantee of future validity. Furthermore, regarding whether the transferor should bear liability for uncontrollable future legal events, current Chinese law does not establish an absolute obligation to guarantee the outcome. Article 509, Paragraph 1 of the Civil Code requires parties to "fully perform their obligations as agreed", while Paragraph 2 emphasizes "adhering to the principle of good faith and fulfilling obligations such as notification, assistance, and confidentiality according to the nature, purpose, and trade practices of the contract". Therefore, the transferor's obligation should be limited to: truthfully disclosing, at the time of entering into the contract, any material events that it knew or should have known could lead to the invalidation of the patent, rather than making uncontrollable guarantees about the future legal status of the patent right. Thus, under the framework of Chinese law, the transferor does not bear a statutory obligation to guarantee uncontrollable future legal events; the relevant risks are, in principle, borne by the transferee, unless the transferor breaches its obligation of good faith by failing to disclose known risks.

This excessive expectation of "outcome guarantees" may distort the incentive function of the patent system. The core of the patent system lies in promoting innovation and diffusion by exchanging limited monopoly for technology disclosure²⁰. Patent rights inherently possess the legal attribute of being presumed valid but subject to challenge (Articles 45 and 47 of the Patent Law). Their stability is affected by multiple uncontrollable factors, including technological evolution, evidence discovery, and legal interpretation. If the inherent risks of this system are transferred to the transferor, innovators may be deterred from patent transactions due to fear of unlimited future liability, and might even choose to substitute trade secrets for patent applications, thereby weakening the functions of technology disclosure and knowledge dissemination. Overemphasizing outcome guarantees blurs the line between patent rights and product quality liability²¹. If the transferor bears near-absolute responsibility for the ultimate fate of the patent, they will face excessively high risks during the transfer, especially for technologies in the early stages of industrialization whose stability has not yet been fully verified. The transfer process often involves risks higher than those of mature technologies. Including all such risks in the transferor's statutory guarantee obligations would severely inhibit the flow of early-stage technologies. These risks mainly include: high uncertainty in technology implementation, vague patent protection scope, highly uncertain market value, and unclear information disclosure boundaries. This could force them to significantly increase the transfer price or refuse the transaction, thus hindering the flow of technology.

¹⁸ SUI, D. "Towards a pro-patentee regime: A fifth amendment to China's patent law", *Indiana International & Comparative Law Review*, V. 33, n° 1, 2023, p. 289-322. DOI: 10.18060/27373

¹⁹ ZHANG, M, GUO, W., & LI, H. "Patent dynamics and patent litigation: A study based on the smartphone industry", *Management Science* ISSN 1672-0334, V. 33, n° 4, 2020, p. 98-106. DOI: 10.3969/j.issn.1672-0334.2020.04.007

²⁰ DE RASSENFOSSÉ, G., & RAITERI, E. "Technology protectionism and the patent system: Evidence from China", *The Journal of Industrial Economics*, V. 70, n° 1, 2022, p. 1-43. DOI: 10.1111/joie.12261

²¹ LICHTMAN, D., & LEMLEY, M. A. "Rethinking patent law's presumption of validity", *Stan. L. Rev.*, V. 60, 2007, p. 45-72. Available at: <https://www.jstor.org/stable/40040376> (accessed on 15 December 2025).

The current legal system does not deny the transferor's obligation to disclose known risks, nor does it exempt them from the basic guarantee of the authenticity of ownership, but it also does not require them to "cover" the uncertainties inherent in the system itself²². Therefore, from an interpretative standpoint, alleviating the tension between the intangibility of patents and the expectation of outcome guarantees does not mean denying the necessity of protecting the transferee's interests, but rather requires distinguishing between "breach of obligation" and "adverse outcome" in the application of regulations. In the context of patent assignment, the assignee often claims that the assignor has breached its warranty obligations because the patent has been declared invalid, cannot be implemented, or its market value has failed.

However, such adverse outcomes do not necessarily constitute a breach of contract in a legal sense. China's patent system employs a typical "grant-first, challenge-later" mechanism. Articles 34 to 40 of the Patent Law stipulate the preliminary and substantive examination procedures for patent applications, Article 45 grants any entity the right to request invalidation after grant, and Article 47 further clarifies that "a patent right declared invalid is deemed to have never existed". This system design acknowledges that patent granting is an administrative presumption based on information at the time of application, and its conclusion is subject to revision. Given the limited resources of patent examination, it is difficult to exhaustively examine all prior art before granting; therefore, invalidation proceedings are an important supplement to patent quality control²³. By clarifying that the transferor should bear the obligation of guaranteeing the authenticity of rights and disclosing risks based on informational advantage and controllability, rather than a comprehensive commitment to all future legal and technological outcomes of the patent, the reasonable application of the contract law warranty against defects in patent transfer scenarios can be achieved while respecting the operational logic of the patent system.

3. Typological definition of warranty obligations in patent assignment contracts

3.1. Defects in legal validity: Reasonable limitation of the transferor's liability

Defects in the legal validity of a patent mainly refer to situations where, after assignment, the patent right is declared invalid, its claims are narrowed, or its scope of protection is denied, resulting in a reduction or loss of its exclusivity. According to Article 45 of the Patent Law, any entity or individual may request the invalidation of a patent right. Based on Articles 22 to 26 of the same law and related implementing regulations, the main statutory grounds for patent invalidation include: (1) lack of novelty, inventiveness, and industrial applicability (Article 22 of the Patent Law), meaning the technical solution has been disclosed or is obvious in the prior art; (2) insufficient disclosure in the specification (Article 26, Paragraph 3 of the Patent Law), making it impossible for a person skilled in the art to implement the patent; (3) claims not based on the specification or unclear scope of protection (Article 26, Paragraph 4 of the Patent Law); (4) amendments exceeding the scope of the original application (Article 33 of the Patent Law); (5) belonging to a subject matter that cannot be patented (such as scientific discoveries, rules of intellectual activities, etc., Article 25 of the Patent Law). These invalidation grounds mostly stem from information

²² XU, C, ZHAN, M., & YE, S. "The protection dilemma and solution of standard essential patents in China", *Dispute Settlement*, V. 10, n° 9, 2024, p. 44-50. DOI: 10.12677/ds.2024.109384

²³ HENKEL, J., & ZISCHKA, H. "How many patents are truly valid? Extent, causes, and remedies for latent patent invalidity", *European Journal of Law and Economics*, V. 48, n°2, 2019, p. 195-239. DOI: 10.1007/s10657-019-09627-4

limitations or technical judgment biases during the patent examination stage, exhibiting both institutional inherentness and ex post-hoc correctability²⁴.

Due to the nature of the patent system, the issue regarding warranty liability for defective patents and whether the assignee's contractual interest is affected by those defects should be examined with respect to the established principles governing the validity and invalidation of patents. The article argues that since the patent validity is inherently variable and the administrative authority to grant patents creates a level of uncertainty regarding the consequences of a patent's invalidation, assignors should not be subject to a comprehensive warranty in relation to their assignors' continuing validity. Instead, the assignor's liability should be limited to those acts that are attributable to the assignor's failure to disclose known or potential grounds for invalidation.

According to Patent Law, patents are issued by the patent administration department under the State Council. It assumes "grant first, correct later" under a general framework. Patents issued under abbreviated review (utility model or design) and through substantive review (invention) have an assumed "presumption effect" created by statute, but presumption effects are not final²⁵. Both the substantive review during the issuance of the patent and the post-issuance invalidation reviews are treated as inherent opportunities to correct the initial error or conduct a new review of the patent²⁶. This framework acknowledges that patents exist as a public interest and that the only protection granted is for as long as the patents meet the statutory criteria and can be challenged. Thus, the institutional characterization of a patent includes the assumption that each patent has a presumption of validity, yet can be fought against. Because of that assumption, a patent can also be invalidated, which is not necessarily a reflection of a fault, but is part of the system operation. Finally, this institutional framework reflects a shared acknowledgment by legislators that patents have limitations, or can be contested, and their value can fluctuate; thus, both invalidation and invalidation status may exist²⁷.

The complexity and difficulty with regard to some aspects of a patent's invalidation cause many transferors not to be able to anticipate or control all potential invalidation types of risk associated with their patent. In fact, many of the circumstances that create this type of lack of foresight for the transferor's ability to reasonably control the risk will go beyond that transferor's reasonable ability to foresee those risks. This is determined by the structural characteristics of the patent system. Grounds for invalidation often rely on newly discovered prior art, which may not have been searched at the time of grant, or may even be non-public globally. Evolutions in legal interpretation may also lead to patents that were initially considered valid being subsequently deemed ineligible for grant²⁸; this is particularly

²⁴ BAI, J. B., WANG, P. J., & CHENG, H. "What multinational companies need to know about patent invalidation and patent litigation in China", *Nw. J. Tech. & Intell. Prop.*, V. 5, n° 3, 2007, p. 449-463. Available at: <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1134&context=njtip> (accessed on 15 December 2025).

²⁵ HUTUKKA, P. "Patent law in comparative context: Differences and similarities of patent law in the European Union, the United States and China", *Maastricht Journal of European and Comparative Law*, V. 30, n° 3, 2023, p. 273-311. Available at: <https://journals.sagepub.com/doi/10.1177/1023263X231206007> (accessed on 15 December 2025).

²⁶ XUE, H. "Management of intellectual property risks in digital trade", *Global Trade and Customs Journal*, V. 17, n° 5, 2022, p. 190-201. DOI: 10.54648/gtcj2022026

²⁷ SVETLICINII, A., & XIE, F. "The anti-suit injunctions in patent litigation in China: what role for judicial self-restraint?", *Journal of Intellectual Property Law & Practice*, V. 19, n° 9, 2024, p. 734-742. DOI: 10.1093/jiplp/jpae049

²⁸ ABRAMOWICZ, M. "The danger of underdeveloped patent prospects", *Cornell L. Rev.*, V. 92, 2006, p. 1065-1122. Available at: <http://scholarship.law.cornell.edu/clr/vol92/iss6/1> (accessed on 15 December 2025).

true for the transferor when that individual is a researcher or a university that does not have the professional expertise or training on how to perform patent analysis. Thus, to determine what constitutes a reasonable level of liability of the transferor in a given situation, it must be determined whether the transferor has acted with reasonable care and fulfilled its duty to disclose information about the patent²⁹.

If a transferor has received a request to invalidate the patent at the time of the transfer and had knowledge of clear evidence supporting the invalidity of the patent, or if that individual has intentionally withheld information that would be pertinent to an evaluation of the patent during the period that the patent application was being processed, then the transferor will be responsible for the consequences resulting from the eventual invalidation of the patent; this is consistent with the obligation of the transferor to exercise good faith in the patent transfer process. On the other hand, if, at the time of the transfer, the transferor was not aware of any basis for an invalidation, and subsequent to the transfer a patent's validity was challenged or denied as a result of new evidence or changes in the law regarding patentability, those situations should be considered as a systemic commercial risk that the transferee should bear.

The current Law places restrictions on a transferor's liability as it relates to the risk of non-patent validity. The Transferor's obligation under the contract will not be construed as a "results guarantee" concerning a valid patent, but as a "process disclosure" obligation regarding known or should know risks. The parties may, however, through their contractual autonomy, agree on more detailed arrangements concerning how to allocate risks regarding patent validity by explicitly indicating in the Contract how that risk will be allocated, how the contract price will be adjusted, when price adjustments will take place, and the reasons why price adjustments will occur. By applying both normative interpretation and contractual autonomy in a coordinated manner, liability issues arising out of defects in patent validity can be accommodated more accurately and predictably under the existing statutory framework³⁰. This narrowing respects the operational logic of the patent system, aligns with the liability attribution system in the Contract Law section of the Civil Code based on fault and attributability, and reserves institutional space for parties to allocate risks through contractual mechanisms.

3.2. Defects in the authenticity of rights: Static obligations as the core of statutory guarantees

In patent assignment contracts, the warranty obligations corresponding to defects in the authenticity of rights constitute a more fundamental and normatively stable part of the assignor's liability system. Compared to the liability limitation issues involved in "defects in legal validity", defects in the authenticity of rights do not point to the dynamic risks faced by patent rights due to external institutional or procedural factors, but rather to the static premise that the patent right itself truly exists, is complete, and belongs to the assignor at the time of assignment. This article argues that, based on this premise-based characteristic, defects in the authenticity of rights should be clearly defined as the core content of statutory warranty against defects in patent assignment; its normative status should not be weakened, much less completely excluded, through the autonomy of the parties.

Conceptually, defects in the authenticity of rights embody the fundamental conditions for the establishment of a patent assignment legal relationship. The so-called defects in the authenticity of rights mainly include two situations: First, the patent right to be transferred does not legally exist, for example, it has not yet been

²⁹ ALIZADEH, B., ABBASI, A., & MOLAEI, Y. "Comparative study of patent holder's obligations in licensing agreements", *Interdisciplinary Studies in Society, Law, and Politics*, V. 3, n° 5, 2024, p. 64-73. DOI: 10.61838/kman.isslp.3.5.7

³⁰ LI, Z. "System reconstruction of error in legal consequences", *Dispute Settlement*, V. 9, n°3, 2023, p. 730-736. DOI: 10.12677/DS.2023.93097

granted, has been declared invalid, or is only in the application stage without independent disposal value; second, although the patent right exists in form, the transferor does not enjoy full disposal rights, such as ownership being in dispute, co-ownership without the consent of other right holders, or being subject to encumbrances such as exclusive licenses or pledges that substantially restrict the transferee's exercise of rights. In the above situations, what the transferee acquires is not a "defective right", but rather a right appearance that cannot achieve the purpose of the contract at all, and its legal risks are significantly higher than general uncertainties in validity. Therefore, positioning the obligation of authenticity of rights as the core static obligation in patent transfer is in line with the basic logic of risk allocation and transaction security.

From an institutional perspective, making the authenticity of rights the core of statutory guarantees aligns with the fundamental value of contract law in ensuring transaction security. Although patents are intangible property, changes in their rights are still publicized through registration (Article 10 of the Patent Law). According to Article 10 of the Patent Law of the People's Republic of China, when transferring patent application rights or patent rights, the parties shall enter into a written contract and register it with the patent administration department under the State Council, which shall then publish the registration. The transfer of patent application rights or patent rights shall take effect from the date of registration. This registration and publication system constitutes the legal appearance and credibility basis for changes in patent rights. The authenticity of ownership directly relates to whether the rights can be registered, enforced against third parties, and the legality of subsequent use; its importance even surpasses the issue of defects in rights in tangible property transactions. If transferors are allowed to completely waive guarantees of ownership authenticity through standard clauses such as "as is" or "no guarantee of undisputed ownership", the credibility of the registration and publicity system will be undermined, and transaction security will be severely damaged.

Therefore, regarding the authenticity of ownership and the existence of rights as a statutory obligation of the transferor, it does not present any obstacles in normative application. This obligation does not impose an additional burden on the transferor but rather confirms the minimum order of patent transactions. While adhering to the existing legal interpretation path, recognizing the statutory status of such obligations and limiting the possibility of their complete exclusion not only conforms to the basic spirit of the Civil Code regarding the transfer of rights but also helps to achieve a balance between risk allocation and transaction security in the patent market.

3.3. Technological utilization defects: From "warranty on defects" to the distinction between risk perception

In patent transfer practice, "defects in technology utilization" typically refer to situations where, after acquiring the patent right, the transferee discovers that the technology is unenforceable, difficult to industrialize, or fails to achieve the expected technical effects³¹. While such issues directly affect the achievement of the transaction's purpose, their legal nature is fundamentally different from defects in the authenticity or legal validity of the rights, and they should not be automatically included in the "warranty of defects" category referred to in Article 870 of the Civil Code. This article argues that directly and automatically including the problem of poor technology implementation within the traditional warranty of defects category is a misunderstanding of the essence of the patent system and the structure of transaction risks. The core of the issue of technology implementability is not a defect

³¹ LIU, L. "Patent quality: A critique of the state of the discussion", IIC-International Review of Intellectual Property and Competition Law, V. 55, n° 4, 2024, p. 499-529. DOI: 10.1007/s40319-024-01444-w

in the right itself, but rather the manifestation of the technical and commercial risks that inevitably accompany the transformation of abstract technical solutions into real productive forces. Therefore, its legal regulation should shift from "outcome-based warranty of defects" to "process-based risk awareness and disclosure", avoiding the improper substitution of contractual liability for the transferee's inherent responsibility for industrialization judgment and commercial risk-taking.

According to Article 2 of the Patent Law, a patent right is an exclusive right legally enjoyed over a "technical solution". Its core function is to prohibit others from implementing the technology without permission, rather than guaranteeing the technology's operability, economic viability, or industrialization potential³². Numerous patents, notably primary stage and laboratory stage patents, generally include only technical principles³³; they frequently do not include full process parameters, equipment support, or other essential knowledge necessary for the extensive production of a technology. When the recipient of a patent desires to put that particular patent into production, the recipient will generally need to either obtain trade secret information, obtain engineering technical support, or develop further from that point. As a result, unless the patent transfer agreement clearly includes warranties regarding the potential performance, the conditions under which it can function, and the technology's anticipated success in the marketplace, any claims that a transferor breached its warranty because the patent "would not work" are an improper blending of warranty exposure with commercial risk and a mixing of the terms "exercisable rights" with "profitably exploitable technologies".

An appropriate institutional strategy should transition from an "outcome guarantee" function to a "risk awareness and information disclosure" function. Article 870 of the Civil Code, which states "guaranteeing the integrity, accuracy, and effectiveness of the technology", should be interpreted narrowly in light of the typical characteristics of technology contracts: "integrity" refers to the technical solution that was disclosed in full in a patent document; "accuracy" refers to a technology with no significant logical contradictions; and "effectiveness" means that the technology is valid when it is transferred and does not guarantee that the transferee will be able to implement it or receive the expected benefits. Although the transferor does not have a legal obligation to ensure the enforceability of the technology transferred, its good faith obligations require that the transferor disclose to a potential transferee any significant known barriers to the implementation of the technology. If the transferor has intentionally withheld information from the transferee that would lead to the transferee entering into a contract under a misrepresentation, it may constitute fraud or pre-contractual liability.

However, this differs in nature from "warranty of defects", as its liability is based on a breach of good faith obligations under information asymmetry, rather than a statutory guarantee of the technical effect. In practice, it is recommended to guide the parties involved to fully disclose and confirm the technical status, supporting conditions, and implementation risks through model contracts, transaction guidelines, etc., so as to bring the issue of technology utilization into the scope of rational negotiation, rather than relying on vague statutory guarantee clauses to cover it up.

4. A defect warranty liability structure guided by the reasonable allocation of transaction risks

4.1. A shift in explanation from formal guarantees to substantive risk allocation

³² YANG, J. "Research on the realization of pledge in intellectual property pledge", *Open Journal of Legal Science*, V. 11, n° 5, 2023, p. 4167-4172. DOI: 10.12677/OJLS.2023.115591

³³ YAO, W., & HU, R. H. "Reconstruction of the reasonable person standard under Chinese patent law", *Marq. Intell. Prop. & Innovation L. Rev.*, V. 26, n° 1, 2022, p. 11-45. Available at: <https://scholarship.law.marquette.edu/ipilr/vol26/iss1/4> (accessed on 15 December 2025).

Under the current regulatory framework, comprised of the Civil Code and the Patent Law, the warranty against defects in patent assignment contracts should not be reduced to a passive remedy for defect exposure and liability initiation. Sales contracts traditionally rely on a warranty system that assumes definite and stable rights regarding tangible items. This creates a logical focus on the seller's consequential guarantee of both "integrity of rights" and "quality" of items³⁴. However, even though patents are considered administratively authorized intangible assets, their rights have a dynamic quality.

Thus, for core legal concepts that are inseparably linked to defects in the authentication of title, an approach that specifies a strict requirement for establishing guarantees should continue on a substantive level to achieve the bottom line stability necessary to maintain the integrity of the transaction environment. On the other hand, for legal performance risks such as changes in legal validity and uncertainties regarding technology use, a greater emphasis should be placed on how predictable, manageable, and possessory of information all performance risk aspects are. By shifting the interpretation of warranty obligations from remedying defects to allocating risk, this interpretive shift not only reflects an appropriate response to the increasing complexity of patent transactions but also a realization of the Contracts Law chapter of the Civil Code. Through better defining the limits of liability of each party, the parties will be more likely to provide full disclosure of any and all material risks at the beginning of a transaction, thus ultimately reducing disputes and increasing the overall efficiency of the transaction process, resulting in a mutually beneficial evolution of both the legal framework and the market economy.

4.2 The dual structure of transferor's obligations: Guarantee and warning

To properly manage the associated risks of these assignments, an analysis of the statutory obligations of assignors reveals two distinct obligations under the law: a static warranty regarding the validity of the patent and a dynamic duty to warn the assignee of any known or reasonably foreseeable risks. This dual obligation framework is consistent with the unique characteristics of patent rights, the way in which patents are commonly transferred, and the current legal framework for determining liability under the Civil Code and Patent Laws. This framework provides a standard against which to assess liability in the litigation process, while also preventing either the possibility of having an undefined liability or the creation of too much liability.

The static guarantee obligation is the basic component of the warranty obligation, since it concerns the primary responsibility of the assignor to represent to the patent assignee their ownership of the patent at the time the contract was created. The assignor guarantees that they are the legal owner of the patent, have the complete and unrestricted right to dispose of the patent assigned to the assignee, have made a full disclosure of any other persons who co-own the patent, possess either an exclusive or a sole license to use the patent, and have not pledged or otherwise encumbered the patent³⁵. The nature of these obligations is such that they are limited to a single act of guarantee and must be fulfilled without exception since they directly relate to whether the item being sold is able to be transferred to the purchaser³⁶. In the Civil Code, the basis for this type of obligation can be found in Article 870, which

³⁴ LING, B. "The new contract law in the Chinese civil code", *The Chinese Journal of Comparative Law*, V. 8, n° 3, 2020, p. 558-634. DOI: 10.1093/cjcl/cxaa030

³⁵ XIAO, Q. "Analysis on the Scope of the Seller's Intellectual Property Security Obligation under CISG—Based on the "Right or Claim" in Article 42.1" in Article 42, Paragraph 1", *Dispute Settlement*, V. 8, n° 4, 2022, p. 844-849. DOI: 10.12677/ds.2022.84114

³⁶ TAN, Z. "The system structure and procedural essentials of the changed circumstances system in the civil code", *Journal of South China University of Technology (Social Sciences Edition)*, V. 23, n° 5, 2021, p. 89-97. DOI: 10.19366/j.cnki.1009-055X.2021.05.009

states that the transferor guarantees that they are the legal owner of the technology being transferred. This obligation reflects a legally defined relationship between the parties with reference to a statutory provision, on the basis of a statutory obligation. In general practice, the mandatory nature of this obligation is accepted by the courts; Any exemption clause in a contract stating, "transfer as is" or "no guarantee of undisputed ownership", will not be upheld because the exemption violates Article 506 of the Civil Code, prohibiting the use of exemption provisions based on the intent or gross negligence of the transferor. The establishment of static guarantee obligations aims to maintain the credibility of the patent registration and publication system, ensuring the transferee's reasonable reliance on the appearance of rights, and constitutes a bottom-line guarantee for transaction security.

A dynamic early warning duty requires a transferor to identify and inform the transferee of any known or reasonably foreseeable instability risks associated with the patent (including receiving a challenge to the patent's validity and knowledge of prior art) at the time of the transfer. In contrast with static warranties - where the transferor provides the transferee with an assurance or guarantee that the patent is valid on a going-forward basis - A dynamic early warning duty is not a guarantee of future patent validity; rather, it is an obligation for the supplier to provide the transferee with the knowledge of all ascertainable, knowable and controllable information at the time of the transfer. The liability of this duty is defined in Article 500 of the Civil Code regarding pre-contractual liability and Article 7 regarding the principle of good faith, emphasizing that the dominant party in an information-inequitable transaction environment must not conceal from the other party any material fact that has the potential to cause or affect the other party's decision. Therefore, if the transferor fails to perform the disclosure duty, resulting in the transferee entering into a contract without knowledge of that liability/risk and suffering resulting damages, the transferor would be liable under either breach of contract or pre-contractual liability. Conversely, if the transferor made truthful disclosures of the relevant risks, but the patent is invalidated, further warranty liability would not apply.

Static guarantee and dynamic early warning divided transferor obligations provide an equitable balance between risk and control. Statically by applying strict liability for all rights under the transferor's control and dynamic early warning through the need for fault (either knowing or should have known) when it comes to the materially partially controllable disclosure of information, Static guarantee provides a structured method to ensure that a transferor does not incur outside risk through an unreasonable assumption of liability or assuming the transferor would always have truthful use of its rights. Respecting the statutory guarantee that rights transferred, including their authenticity, will be made, and including reasonable good faith liability limits for dynamically controlled risk and for developments that may affect an existing right's legal validity, grants greater clarity and relevance to the courts regarding patent transfer agreements than their current practices.

4.3. The reasonable scope of autonomy of will: Disclosure, pricing, and liability allocation

After establishing a dual structure of warranty liability consisting of static guarantees and dynamic warnings, a further question arises: how should we understand the space for parties to reconfigure patent transaction risks through their autonomy of will, beyond statutory warranty liabilities? Patent assignment contracts are highly specialized and vary significantly from case to case; a single, rigid liability rule cannot cover the differences in technological maturity, legal stability, and market prospects among different patents³⁷. The Civil Code establishes the principle of

³⁷ ZOU, J. "Standard Essential Patent Disputes in Intellectual Property Protection—OPPO

autonomy of will (as in Article 5) and provides a basic framework for determining the content of contracts (Article 470) and allocating risks (as embodied in Article 612 regarding the provisions on warranty against defects in title). As a type of civil contract, a patent assignment contract, while adhering to the mandatory formal provisions of Article 10 of the Patent Law, allows both parties to agree on substantive matters such as the scope of disclosure, price, and risk consequences in accordance with the aforementioned general provisions of the Civil Code. Therefore, without violating mandatory regulations and basic transaction order, acknowledging and regulating the disclosure, pricing, and allocation of risks by parties through contractual clauses is not only a reflection of respect for freedom of contract but also an important mechanism for achieving a reasonable allocation of transaction risks.

In practice, parties can use contractual mechanisms to manage patent-related risks in a refined manner. One approach is a tiered disclosure mechanism. For patent assignments, the disclosed content can be broadly categorized into information on the status of rights, legal risk information, and background information on the technology implementation³⁸. The first two types of information are directly related to the authenticity and legal stability of the rights and should, in principle, be proactively disclosed by the transferor. Information related to technology implementation, however, can be disclosed to a specific degree through contractual agreement, based on the professional capabilities and negotiating positions of both parties. The transferee is able to quantify the risk level and determine whether or not to proceed with the transaction. And also request additional protection, by outlining known invalidation requests, potential infringement claims, and conditions dependent upon technological implementation of contract terms. Secondly, a risk-based pricing mechanism. The parties may establish differentials in pricing based upon the level of risk associated with a specific patent. For example, when a patent has pending invalidation disputes, parties may mutually agree on a lower transfer price. In contrast, for high-value core patents, they may include clauses for either "refund upon invalidation" or "partial return". The final mechanism is the liability allocation mechanism. Contracting parties can come to a consensus on what will trigger the liability, including what types of liability exist, and establish limits on the respective liability regarding the legal defects and risks of using the technology. If a patent agreement is ultimately deemed invalid, it may be addressed in several ways: either terminating the contract, returning the purchase price, or just sharing part of the loss³⁹. When the technological implementation will not occur, it may be agreed that the transferee shall bear the responsibility, or the transfer may be facilitated through a technical support obligation. The legitimacy of such agreements lies in the fact that they address systemic risks rather than the issue of the authenticity of rights that the transferor can control.

Overall, through the three mechanisms of disclosure, pricing, and liability allocation, parties can manage the uncertainties in patent transfer in a refined manner within the framework of statutory warranty against defects. At the judicial level, a cautious and respectful stance is taken towards such contractual arrangements. While clarifying the bottom line of statutory guarantee obligations, the reasonable space for parties to disclose, price, and allocate patent implementation risks through contracts

Guangdong Mobile Communication Co., Ltd. and Sharp Corporation Standard Essential Patent Licensing Dispute Jurisdictional Objection Dispute Case Commentary", Dispute Settlement, V. 10, n° 8, 2024, p. 145-152. DOI: 10.12677/ds.2024.108364

³⁸ ZHANG, Z., & REN, X. "Multidimensional legal research on the transfer of environmentally sound technologies in China", Sustainability, V. 15, n° 3, 2023, p. 2151-2171. DOI: 10.3390/su15032151

³⁹ LIU, K. "Analysis and suggestions for improvement of the contract termination system in the civil code", Tsinghua Law Journal, V. 14, n° 3, 2020, p. 152-178. Available at: <https://www.cnki.com.cn/Article/CJFDTotal-QHFX202003011.htm> (accessed on 15 December 2025).

is fully recognized and protected. Maintaining a balance between respecting the autonomy of will and safeguarding transaction security, and recognizing rational agreements based on full information disclosure, helps to form stable transaction expectations and promotes the operation of the patent market under controllable risks.

5. Conclusion

This article focuses on the definition and liability for warranty obligations in patent assignment contracts. Within the current framework of the Civil Code and the Patent Law, it explores how to transform this system from vague and generalized to precise and reasonable through typological interpretation and structured application. Research shows that the conflation of defects in rights, legal validity, and technology utilization objectively leads to an inappropriate expansion of the scope of warranty liability. This not only contradicts the inherent nature of patent rights—"presumed valid but reversible"—but also reduces the reasonable space for parties to allocate risks through contractual mechanisms. By reviewing the normative foundation and analyzing practical difficulties, this article reveals the fundamental tension between the "expectation of outcome-based warranty" and the inherent "dynamic uncertainty" of patent rights when applying existing rules to patent assignments. Patent rights are presumed rights granted administratively, but can be subsequently declared invalid. The "grant first, correct later" mechanism established by the Patent Law explicitly acknowledges that its validity is subject to dispute and revocation. Requiring the transferor to guarantee the continued validity of the patent effectively imposes liability on them for uncontrollable examination deviations, discoveries of new prior art, or changes in legal interpretation—risks inherent to the system—violating the principle of risk-bearing. Patent validity is inherently a correctable legal assumption; excessive attribution of consequences will inhibit technology transactions. Such expectations of assurance not only exceed the reasonable boundaries of good faith obligations but also distort the incentive logic of the patent system—"exclusivity in exchange for limited protection". To resolve this tension, this article proposes to categorize defects and match them with differentiated legal characterizations: defects in the authenticity of rights, which correspond to the exclusivity and transferability of patent rights and constitute an unavoidable statutory warranty obligation; defects in legal validity, which stem from the dynamic nature of patents being "authorized first and corrected later", and trigger a duty of good faith only when the transferor knew or should have known but failed to disclose; and defects in technology implementation, which are commercial risks related to the intangible nature of patents and the uncertainty of technology, and are in principle regulated by the autonomy of the contract. Liability for defects in legal validity should be reasonably limited, with its attribution primarily based on whether the transferor fulfilled its disclosure obligations based on the principle of good faith regarding known significant risks, rather than an absolute guarantee of "permanent validity". Defects in the authenticity of rights constitute the core of a statutory guarantee that cannot be completely exempted by agreement; this is a static guarantee obligation that maintains the bottom line of the transaction. As for defects in technology utilization, they should be primarily regarded as an implementation risk that needs to be regulated through information disclosure and risk warning mechanisms, avoiding their automatic inclusion in the traditional scope of warranties against defects in goods. Based on this typological definition, this paper further argues that the function of the warranty system for defects in patent transfer should shift from simply providing ex-post defect remedies to a reasonable allocation of risks before and during the process. This requires interpretation, structuring the transferor's obligations into a dual-level structure of a static guarantee of the authenticity of rights and a dynamic early warning of known significant risks.

Based on this, this paper proposes a dual-obligation model that combines a static

guarantee of the integrity of rights with dynamic disclosure of known risks. By systematically interpreting and coordinating the general rules of the Contract Law section of the Civil Code (especially the provisions on security obligations and freedom of contract) and the special norms of the Patent Law (especially Article 10 on the effectiveness of transfer registration), distinguishing different types of defects, clarifying the corresponding obligations and liability principles, and reserving reasonable space for autonomy of will, the generalization of "outcome-based warranty" liability can be avoided, making legal rules more aligned with the unique risk structure of patent transactions: (1) The objective existence of patent rights and the absence of concealed ownership disputes are taken as the unavoidable statutory guarantee baseline; (2) For dynamic risks such as the maintenance of patent validity and the implementability of technology, liability for breach of good faith is only incurred when the transferor knowingly or should have known of obvious invalidity but failed to disclose it; (3) Parties are encouraged to allocate the remaining risks independently through contractual mechanisms such as tiered disclosure and exemption clauses, which is in line with the principle of good faith in Article 509 and the spirit of autonomy of will in Article 510 of the Civil Code.

6. References

- ABRAMOWICZ, M. "The danger of underdeveloped patent prospects", *Cornell L. Rev.*, V. 92, 2006, p. 1065-1122. Available at: <http://scholarship.law.cornell.edu/clr/vol92/iss6/1> (accessed on 15 December 2025).
- ALIZADEH, B., ABBASI, A., & MOLAEI, Y. "Comparative study of patent holder's obligations in licensing agreements", *Interdisciplinary Studies in Society, Law, and Politics*, V. 3, n° 5, 2024, p. 64-73. DOI: 10.61838/kman.isslp.3.5.7
- BAI, J. B., WANG, P. J., & CHENG, H. "What multinational companies need to know about patent invalidation and patent litigation in China", *Nw. J. Tech. & Intell. Prop.*, V. 5, n° 3, 2007, p. 449-463. Available at: <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1134&context=njtip> (accessed on 15 December 2025).
- BIAN, R. "Explaining the 'low and unexplainable' patent damages in China: An empirical analysis of 992 judicial opinions", *Queen Mary Journal of Intellectual Property*, V. 14, n° 4, 2024, p. 405-438. DOI: 10.4337/qmjip.2024.04.03
- DE RASSENFOSSE, G., & RAITERI, E. "Technology protectionism and the patent system: Evidence from China", *The Journal of Industrial Economics*, V. 70, n° 1, 2022, p. 1-43. DOI: 10.1111/joie.12261
- EISENBERG, R. S. "Patents and the progress of science: Exclusive rights and experimental use", *The University of Chicago Law Review*, V. 56, n°3, 1989, p. 1017-1086. DOI: 10.2307/1599761
- GAO, S. "Application and Limitations of the Subordination Rule of Security under the Civil Code", *Jurisprudence*, V. 464, n.º 7, 2022, p. 3-19. Available at: <https://qikan.cqvip.com/Qikan/Article/Detail?id=7102252536> (accessed on 15 December 2025).
- GUO, P., & LI, L. "The reform of contract rules in china's new civil code: Successes or pitfalls", *European Journal of Law Reform*, V. 23, n° 2, 2021, p. 242-263. DOI: 10.5553/EJLR/138723702021023002005
- HEGDE, D., HERKENHOFF, K., & ZHU, C. "Patent publication and innovation", *Journal of Political Economy*, V. 131, n° 7, 2023, p. 1845-1903. DOI: 10.1086/723636
- HENKEL, J., & ZISCHKA, H. "How many patents are truly valid? Extent, causes, and remedies for latent patent invalidity", *European Journal of Law and Economics*, V. 48, n°2, 2019, p. 195-239. DOI: 10.1007/s10657-019-09627-4
- HERBOTS, J. H. "The Chinese new Civil Code and the law of contract", *China-EU Law Journal*, V. 7, n° 1, 2021, p. 39-49. DOI: 10.1007/s12689-021-00090-6
- HUTUKKA, P. "Patent law in comparative context: Differences and similarities of patent law in the European Union, the United States and China", *Maastricht Journal of European and Comparative Law*, V. 30, n° 3, 2023, p. 273-311. Available at: <https://journals.sagepub.com/doi/10.1177/1023263X231206007> (accessed on 15 December 2025).

- JIANG, Q., & ZHU, X. "The process mechanism of patentee's self-initiated invalidation declaration: A multi-case study based on grounded theory", *Research and Development Management*, V. 34, n° 5, 2023, p. 179-190. DOI: 10.13581/j.cnki.rdm.20211170
- LI, Z. "System reconstruction of error in legal consequences", *Dispute Settlement*, V. 9, n°3, 2023, p. 730-736. DOI: 10.12677/DS.2023.93097
- LICHTMAN, D., & LEMLEY, M. A. "Rethinking patent law's presumption of validity", *Stan. L. Rev.*, V. 60, 2007, p. 45-72. Available at: <https://www.jstor.org/stable/40040376> (accessed on 15 December 2025).
- LING, B. "The new contract law in the Chinese civil code", *The Chinese Journal of Comparative Law*, V. 8, n° 3, 2020, p. 558-634. DOI: 10.1093/cjcl/cxaa030
- LIU, J. "The Construction of Judicial Adjudication System for Patent Validity in my country", *Journal of Shenzhen University (Humanities and Social Sciences Edition)*, V. 41, n° 3, 2024, p. 110-120. Available at: <https://xb.szu.edu.cn/EN/Y2024/V41/I3/110> (accessed on 15 December 2025).
- LIU, K. "Analysis and suggestions for improvement of the contract termination system in the civil code", *Tsinghua Law Journal*, V. 14, n° 3, 2020, p. 152-178. Available at: <https://www.cnki.com.cn/Article/CJFDTotal-QHFX202003011.htm> (accessed on 15 December 2025).
- LIU, L. "Patent quality: A critique of the state of the discussion", *IIC-International Review of Intellectual Property and Competition Law*, V. 55, n° 4, 2024, p. 499-529. DOI: 10.1007/s40319-024-01444-w
- MA, Z. "On the main mission of the intellectual property system: promoting the use of intellectual property", *Social Sciences*, V. 4, n° 1, 2021, p. 116-128. Available at: <https://www.cnki.com.cn/Article/CJFDTotal-SZKX202101010.htm> (accessed on 15 December 2025).
- MAO, H. "The economics of China's patent system: from interdisciplinary integration to scientific decision-making", *Studies in Science of Science*, V. 38, n° 11, 2020, p. 1976-1986. DOI: 10.16192/j.cnki.1003-2053.2020.11.007
- MAZAHERI KUHANESTANI, R., & NASERI, S. "A study over patent assignment agreement", *The Judiciarys Law Journal*, V. 84, n° 109, 2020, p. 191-226.
- SMITH, H. E. "Intellectual property as property: Delineating entitlements in information", *Yale LJ*, V. 116, 2006, p. 1742-1822. Available at: https://yalelawjournal.org/pdf/567_ihvzbhf9.pdf (accessed on 15 December 2025).
- SUI, D. "Towards a pro-patentee regime: A fifth amendment to China's patent law", *Indiana International & Comparative Law Review*, V. 33, n° 1, 2023, p. 289-322. DOI: 10.18060/27373
- SUN, H. "Post-grant patent invalidation in China and in the United States, Europe, and Japan: A comparative study", *Fordham Intell. Prop. Media & Ent. LJ*, V. 15, 2004, p. 273-332. Available at: <https://ir.lawnet.fordham.edu/iplj/vol15/iss1/5> (accessed on 15 December 2025).
- SVETLICINII, A., & XIE, F. "The anti-suit injunctions in patent litigation in China: what role for judicial self-restraint?", *Journal of Intellectual Property Law & Practice*, V. 19, n° 9, 2024, p. 734-742. DOI: 10.1093/jiplp/jpae049
- TAN, Z. "The system structure and procedural essentials of the changed circumstances system in the civil code", *Journal of South China University of Technology (Social Sciences Edition)*, V. 23, n° 5, 2021, p. 89-97. DOI: 10.19366/j.cnki.1009-055X.2021.05.009
- XIAO, Q. "Analysis on the Scope of the Seller's Intellectual Property Security Obligation under CISG—Based on the "Right or Claim" in Article 42.1" in Article 42, Paragraph 1", *Dispute Settlement*, V. 8, n° 4, 2022, p. 844-849. DOI: 10.12677/ds.2022.84114
- XU, C., ZHAN, M., & YE, S. "The protection dilemma and solution of standard essential patents in China", *Dispute Settlement*, V. 10, n° 9, 2024, p. 44-50. DOI: 10.12677/ds.2024.109384
- XU, D., & ZHANG, E. "On the Reform Path of my country's Patent Confirmation System: From "Administrative Unitary System" to "Administrative and Judicial Dual System"", *Journal of Chongqing University (Social Sciences Edition)*, V. 28, n° 2, 2022, p. 183-194. DOI: 10.11835/j.issn.1008-5831.fx.2021.09.002
- XUE, H. "Management of intellectual property risks in digital trade", *Global Trade and Customs Journal*, V. 17, n° 5, 2022, p. 190-201. DOI: 10.54648/gtcj2022026
- YANG, J. "Research on the realization of pledge in intellectual property pledge", *Open Journal of Legal Science*, V. 11, n° 5, 2023, p. 4167-4172. DOI: 10.12677/OJLS.2023.115591
- YANG, X. "Research on the anti-unfair competition law regulation of malicious patent litigation", *Open Journal of Legal Science*, V. 13, n° 5, 2025, p. 1043-1049. DOI:

10.12677/ojls.2025.135148

- YAO, W., & HU, R. H. "Reconstruction of the reasonable person standard under Chinese patent law", *Marq. Intell. Prop. & Innovation L. Rev.*, V. 26, n° 1, 2022, p. 11-45. Available at: <https://scholarship.law.marquette.edu/ipilr/vol26/iss1/4> (accessed on 15 December 2025).
- ZHANG, M, GUO, W., & LI, H. "Patent dynamics and patent litigation: A study based on the smartphone industry", *Management Science* ISSN 1672-0334, V. 33, n° 4, 2020, p. 98-106. DOI: 10.3969/j.issn.1672-0334.2020.04.007
- ZHANG, Z., & REN, X. "Multidimensional legal research on the transfer of environmentally sound technologies in China", *Sustainability*, V. 15, n° 3, 2023, p. 2151-2171. DOI: 10.3390/su15032151
- ZOU, J. "Standard Essential Patent Disputes in Intellectual Property Protection—OPPO Guangdong Mobile Communication Co., Ltd. and Sharp Corporation Standard Essential Patent Licensing Dispute Jurisdictional Objection Dispute Case Commentary", *Dispute Settlement*, V. 10, n° 8, 2024, p. 145-152. DOI: 10.12677/ds.2024.108364