УДК 342.77/78

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CHARACTERISTICS OF ADMINISTRATIVE AND LEGAL REGULATION OF INTELLECTUAL PROPERTY: GENESIS OF DEVELOPMENT

http://doi.org/10.23939/law2023.37.166

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The article is dedicated to a comprehensive study of theoretical and practical issues of administrative and legal regulation of Intellectual Property (IP) as the main element of innovative activity. A particular research has been conducted into the scientific background of administrative and legal regulation of intellectual property.

The role definition of intellectual property in the innovative development of the state economy and Ukrainian society is highlighted. The mode of formation, i.e. genesis of administrative and legal regulation of intellectual property is outlined as well as expansion of legislation in this particular sphere is analyzed. The administrative and legal aspects of regulating the activities of intellectual property protection entities are specified.

The research denotes some growing tendencies of intellectual property law and a number of directions in its further progress which is expressed in globalization of the law and in transition from protection of material property rights to information protection.

It is stated in the article that existing intellectual property model or paradigm as well as administrative and legal regulation establishment do not reflect the characteristic, concrete public relations in a modern information society. The priority of the principle of full control of the right holder over the use of the object of intellectual rights leads to the fact that the development of legislation in the field of intellectual property is carried out in the form of strengthening the protection of intellectual rights, i.e. without adapting to the needs of the information society and innovative activity.

It is emphasized that formation of conceptually unified single legal space for administrative and legal regulation of intellectual property directly determines efficiency of the process of an innovative development itself. Compliance to conceptually unified approach at developing strategy will definitely determine the outcome.

Key words: intellectual property, administrative and legal regulation, Intellectual Property protection, Intellectual Property protection subjects (entities).

Formulation of the problem. It is worth giving an emphasis to the fact that intellectual resources, specifically knowladge and information, constitute a key factor for economy development.

Competitiveness of our state on the world scientific and high-tech product markets greatly depends on intellectual property effective usage. As progressive experience abroad demonstrates, competitiveness, a strong desire to be more successful raises productivity of any kind, providing a dynamic progress of the society. During the last decades governments of many countries all over the world have been paying significant attention to effective implementation of intellectual property rights, constantly improving its legislative regulation.

Constant dynamic development of the current legislation of Ukraine requires a conducted research into difficult dilemmas, predicaments arising in the process of innovative activity at the level of legislation and implementation practice.

Problem research analysis. The following scientists have examined the issues of intellectual property administrative and legal regulation and considered them in their publications: V. Averyanov, V. Bevzenko, A. Berlach, A. Borko, N. Bortnik, M. Verbenskyi, V. Halunko, O. Golyashkin, K. Hutsenko, S. Yesimov, I. Zozulya, N. Kaminska, T. Kolomoyets, V. Kolpakov, A. Komzyuk, O. Kuzmenko, K. Levchenko, N. Litvin, O. Mikolenko, O. Ostapenko, G. Rimarchuk, I. Sidoruk, V. Sinchuk, O. Sinyavska, O. Sokolenko, S. Stetsenko, I. Homishin, N. Hristinchenko, Y. Shemshuchenko, I. Shopina, H. Yarmaki and others. The above listed scientists have made a significant contribution to the development of intellectual property problems legal regulation in the context of administrative law. However, in terms of adaption of national legislation to the requirements of the European Union, a number of issues of the specified problem remain debatable.

The aim of the article on the performed research, based on the analysis of the legal framework, is to substantiate the areas for improvement the intellectual property administrative and legal regulation.

Presentation of the main content. Realizing the importance of intellectual activity and property rights, humanity began active work on its protection and maintenance. Currently, the protection of the results of mental activity is carried out by a special United Nations (UN) institution and each state particularly. It is quite understandable, as intellectual property represents something without which the economy and society in general cannot progress these days.

Instead, it is necessary to emphasize the fact, that the structure of legislation regulating legal relations in the field of intellectual property is quite broad and includes norms of various branches of law,namely, administrative law, laws and bylaws of a complex nature . For a conceptual approach to legal regulation, it is fundamental that the starting point of the concept of development was the provisions of the Central Committee of Ukraine on the right to the results of intellectual activity and a means of individualization.

The importance of intellectual property is difficult to overestimate in today's world because of its ever-growing influence on economic and social growth. New technologies, scientific discoveries and inventions, rationalizing proposals have long become the driving forces of human progress, side-by-side with high quality education and a high level of culture. Among the determinants of the economy and society, intellectual property is gradually gaining priority over material property.

Article 1 of the Constitution declares Ukraine a democratic, socially legal state, and this determined the changes in the basic principles of the legal system. These changes have gained special importance in determining the status of the state as a subject of legal relations. The responsibility of the state to the people, individual citizens, the humanistic orientation of the state social policy generate the need for appropriate legal reforms.

As one of the most urgent practical problems there remains formation and establishment of the legal position of the state in relation to intellectual property. It is necessary because of the economic significance on the one hand, and because of the existing shortcomings of the legal system in this area, on the other hand. The state of legal uncertainty makes it impossible to effectively implement state policy and its rights regarding intellectual property, which is created at the expense of the state. In this sphere there is now a certain set of legal problems that need to be property resolved. The transfer of intellectual property relations to private foundations does not mean that the state cannot become the owner of the rights. On the contrary, the state should perform an active role among other subjects of intellectual property rights.

With the adoption of the fourth book "On Intellectual Property rights" into the Civil Code of Ukraine, we are witnessing the fourth stage of law-making activities regarding the protection of intellectual property rights in Ukraine. The first stage (declaration and approval) includes the law of Ukraine "On Property", approved in 1992 by the decree of the President of Ukraine, and named "Temporary provision on legal protection on industrial property objects and rationalizing proposals in Ukraine". The second stage tentatively covers the period of 1993–1995. During this period, the main laws on the protection of industrial property rights, copyright and related rights were adopted. At the same time the issue of protection of rights to industrial property objects which constitute a state secret, was normatively settled. The third stage of lawmaking activity started directly at the end of the second millennium.

In Ukraine, the process of regulating the right to inventions, utility models and industrial designs took on new forms with the adoption of the following laws, namely: Law of Ukraine "On Protection of Rights to Inventions and Utility Models" No. 3687-12 of December 23, 1993 [3] and "On Protection of Rights to Industrial designs" No. 3688-12 of December 23, 1993 [4]. The abovementioned laws regulated property and personal non-property rights in connection with the creation, protection and use of inventions, industrial designs, trademarks and service marks, as well as recognition of the author's rights to an innovative proposal.

At the current stage of the state's development, the legislation in the area of protection of objects of individualization of goods and services of manufacturers operates in accordance with the law of Ukraine "On the Protection of rights to signs for goods and services" No. 3689-12 dated December 23, 1993. This law regulates legal issues related to the determination of the protective capacity of trademarks, legal relations in the order of acquisition and use of property rights to objects of intellectual property, giving them the legal character of a registered object of intellectual property, followed by ensuring the rights and responsibilities of the relevant entity.

From the very beginning of the formation of independent Ukraine, some of the other priority directions of reforming the legal system were to increase the level of protection and ensure proper protection of intellectual property rights. Taking into account modern social demands and the creation of relevant specialized state authorities, there was a desire to create a national system for regulating relations with respect to intellectual property rights.

In some sources, scientists offer the following chronological division into periods of the formation of the domestic system of intellectual property protection:

– 1991–1994 – implementation of primary legislative principles and basic organizational structures;

– 1995–1999 – introduction of a course on socio-economic reforms with the application of international standards in the area of intellectual property protection;

– 2000-for now – improvement of regulatory and legal documents created at previous stages, intensification of Ukraine's participation in the system of international conventions and treaties on intellectual property [6, p. 17–20].

Ukraine's declared course on integration into the European Union and joining the World Trade Organization requires ensuring the protection of rights to objects of copyright and related rights and objects of industrial property at the level existing in economically developed countries. This course also requires the adaptation of national legislation to the provisions of European law and the reception of the basic principles of the system of protection and defense of intellectual property rights.

One of the tasks of the state in this direction is not only the declaration, but also implementation of intellectual property rights. The mentioned process includes such components as security, protection and guarantee. Confirmation of the expediency of using the term "protection of intellectual property rights" is found directly in the Constitution of Ukraine, where in Chapter 1 it is stated that the state guarantees the protection of the rights of all subjects of property and management rights [1]

Despite the completed law-making work, the level of certainty of the regulatory legal system regarding the position of the state as a special subject of intellectual property law, its right and legal capacity cannot be considered sufficient. This is caused by the inconsistency of the legal norms,in particular, those established by the Article 2 and Article 421 of the Civil Code of Ukraine [8] and Article 40 of the Law of Ukraine "On Property" [7], causing the problem of recognition of the state's status as a subject of intellectual property. Therefore, recognition the state of Ukraine's legal status as a legal entity, that is, a subject of intellectual property rights, is problematic and imperfect.

According to Article 170 of the Civil Code of Ukraine, "the state acquires and exercises civil rights and obligations through state authorities within the limits of their competence established by law". As confirmation of the existing legal problem regarding the status of the state in intellectual property law there is the absence, lack of a competent authority empowered to assign rights to Intellectual property objects and their implementation on behalf of the state. The state may become a subject of this right in cases where the term of legal protection of one or another object of intellectual property has expired, or in the order of inheritance. The state can also become the subject of intellectual property law on the basis of relevant civil acts,such as donation, free transfer of rights to the state by the owner, etc. On the same grounds,other state bodies and self-government bodies may become subjects of intellectual property rights. However, neither the Civil Code nor other current legislation of Ukraine on intellectual property contains norms that would regulate the procedure for the transfer of intellectual property rights to the state or its bodies in the specified cases [8].

The defined regulatory legal limitation of the state's status regarding intellectual property rights contradicts the basic principles of the Constitution of Ukraine and civil law. In particular, Article 13 of the Constitution proclaims the equality of all subjects of property rights. And Article 167 of the Civil Code of Ukraine declares that "the state acts in civil relations on equal rights with other participants in these relations.

Certainly, the state is the main investor in the creation of intellectual property in our country. The development of education, science and culture mostly depends on state funding. The outlined problem becomes even more important when state funding is limited. Due to regulatory and legal inconsistency, the created objects of intellectual property rights do not find an effective owner in the state, so the profits from the exercise of rights to them bypass the state treasury.

The peculiarity of the legal status of the state is the equality of civil legal relations with subjects of private law. Since the subject is endowed with sovereignty and authoritative powers,it itself is the regulator of the specified relations, performs a law-making function, uses authoritative powers. Also, this subject (the state) through state policy must regulate social relations to create favorable conditions for economic and cultural development, progress of the constitutional state, protection of legal rights and interests of other subjects of legal relations.

Thus, having analyzed the content of the legislation of Ukraine regarding the legal status of the state as a subject of intellectual property law, we state the lack of opportunities to determine the state of Ukraine as a subject of intellectual property law, the lack of certainty in science regarding the specified problems. Therefore, it is possible to hope for a solution to the outlined practical and theoretical issues only through the regulation of the normative legal framework, which will specifically determine the legal position of the state and its legal condition and ability.

The practical use of the highest achievements of science and technology gradually affects the change in general trends of social and economic growth at the national and international level. Intellectual property becomes a significant stimulus for the modern economy and a potential source of its sustainable development, which is an important factor for overcoming the consequences of the global financial and economic crisis.

New challenges of nowadays, such as progress of artificial intelligence technologies, robotics. The Internet of Things, robotic cars, three-dimensional printing,nanotechnology, biotechnology cannot help but influence the increase of legislation.

Proceeding now to consider some aspects of the evolution of intellectual property law in the context of the issue itself, taking into account the problem of possible recognition of the artificial intelligence system as a subject of copyright and patent rights.

For the scientific understanding of the problems of protecting the rights of artificial intelligence systems on the results of their intellectual activity, proper accounting of the targets of intellectual property law, as well as the potential negative and positive consequences of ensuring the protection of such rights, is indispensable.

Intellectual Property law is aimed at protecting the results of a person's intellectual activity, and this protection is by no means unlimited. In particular, one of the purposes of intellectual property law is to provide the creator of work or invention with economic benefits from its use by other persons. Artificial intelligence does not and cannot have such a necessity.

An alternative solution to granting artifical intelligence systems rights to the results of their intellectual activity is either the transfer of all rights to people who in any way participated in the activity of artifical intelligence, or the transfer of such works and inventions into public domain. However, the transfer of creations of artifical intelligence into the public domain may inhibit the evolution of innovations in this area, as it will not allow companies investing in artificial intelligence to receive the corresponding economic benefits.

Frank De Costa and Alize Carrana point out that the problems of intellectual property protection in the context of the application of artifical intelligence are usually related to two aspects: ensuring freedom of action when using artifical intelligence without violating the intellectual rights of third parties and protecting investments in research and development in the area of using artifical intelligence [9].

For instance, the growth of artifical intelligence technologies capable of developing inventions may lead to the appearance of a number of patent applications both for individual results of intellectual activity and for broader classes of inventions. This could ultimately stifle innovation, as everyone involved in any particular industry,would be forced to obtain licenses to use numerous patented inventions. In addition, there is an increased risk of concentration of economic power in certain areas or markets due to the resources available to individual subjects to obtain numerous patents.

Some authors justify the necessity to revise the approach to the legal regulation of the implementation and protection of intellectual rights by the fact that a number of new technologies in the field of artifical intelligence are capable of independently creating works, and this threatens the established business models and even leads to the devaluation of certain forms of human creativity.

Timothy Butler wrote back in 1982 that that the courts, if they determine that the authorship of a specific result of the activity of artifical intelligence actually belongs to it, and not to a person, have at their disposal several alternative ways of solving the problem:

– completely refuse to grant artifical intelligence copyright;

– copyright the artifical intelligence system or divide these rights between the system and the person;

– distribute the copyright between the right holder of the basic software and the owner of the computer;

– create a fictional human author and transfer his copyright to the copyright holder of the basic software or the owner of the computer [10].

Deepak Somaya and Lav. R. Varshney see three possible options for the evolution of legal regulation in the area of protection of rights to the results of intellectual activity in the context of the usage and functioning of artifical intelligence:

– equating the artifical intelligence system to a tool similar to a pencil, which will not affect the implementation and protection of intellectual property rights;

– giving the artifical intelligence system the legal status of a special agent, which does not have its own rights; thus, all works created with the participation of such a system pass into the public domain;

– the artifical intelligence system acts as a social agent endowed with some aspects of intellectual rights [11].

The alternative idea of recognizing the joint authorship of a person and a system in the context of intellectual property law and the legal capacity of an artifical intelligence system is a less radical option. However, there are certain drawbacks as well. In particular, the institution of co-authorship provides for the establishment of certain rights and obligations for each of the co-authors, and the economic benefits from the realization of rights to a work or invention, as well as obligations, can be previously divided by means of an agreement. In a situation where there is a joint, hybrid author in the form of a person and a machine, the conclusion of such an agreement is meaningless, just as the concept of a machine that has legal rights and obligations is absurd.

Scientists believe that computer programs or other innovative technologies are only a tool for obtaining new results, the rights to which should belong to the developers of the programs and (or) the creators of the corresponding equipment.

Researchers also note that as long as robots do not have self-awareness, they will not worry about the violation of their intellectual rights. And relations between creators and users of robots can be regulated by available means. Due to the fact that a person nevertheless participates in the creation of works with the help of artifical intelligence, existing laws should be sufficient to protect the results of such activity.

Summing up, we note that, in our view, intellectual property law should undergo certain changes taking into account the development of new technologies, including potential ones. Yet, there is no urgent demand to fundamentally change the entire system and principles of this sphere of law in order to ensure recognition of the legal personality of artifical intelligence systems. Machines should not be separated from humans.

Conclusions. The institution of intellectual property has a special character, since intellectual property is not a type of real property right, therefore it cannot be regulated in the same ways as real property rights. This institution requires other, special norms and rules for their protection, because they must also be protected thoroughly.

Intellectual Property in Ukraine has a fairly developed structure, a vast index of objects of intellectual activity, as well as correspondingly developed legislation related to the defense and protection of intellectual property.

To summarize considered above, we may state that nowadays intellectual property occupies a distinctive niche in the modern economy Nevertheless, the intellectual property institute has come a long way to now occupy a relevant position in the world. Gradually humanity gave more and more meaning to this concept of intellectual property, creating an economic, political and legal basis for its existence. Intellectual Property, in turn, performing the functions assigned to it, has become an impetus for the development of production, the economy and the market. Now the lists of objects of intellectual property protected by law (which is also important), include a huge number of names prescribed directly in legal acts. The legislation of Ukraine and of the world has provided protection of intellectual property for a considerable time.

Therefore, we can affirm that the institute of intellectual property has been developing for a great deal of time and continues its evolution even today. Having realized the importance of intellectual activity and property, humanity began active work on its defense and protection. Now the protection of the results of intellectual activity is carried out by a special institution of the UN along with each state in particular. And this is quite understandable, as intellectual property is something without which the economy and society in general cannot evolve these days.

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Дата надходження: 19.01.2023 р.

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ХАРАКТЕРИСТИКА АДМІНІСТРАТИВНО-ПРАВОВОГО РЕГУЛЮВАННЯ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ: ГЕНЕЗА РОЗВИТКУ

Проведено комплексне дослідження теоретичних і практичних питань адміністративно-правового регулювання інтелектуальної власності як основного елемента інноваційної діяльності. Проаналізовано наукознавче підґрунтя дослідження адміністративно-правового регулювання інтелектуальної власності.

Особливу увагу приділено визначенню ролі інтелектуальної власності в інноваційному розвитку економіки держави та українського суспільства. Охарактеризовано ґенезу адміністративно-правового регулювання інтелектуальної власності та проаналізовано розвиток законодавства у цій сфері. Розглянуто адміністративно-правові аспекти регулювання діяльності суб'єктів охорони інтелектуальної власності.

Проведено дослідження щодо тенденцій розвитку права інтелектуальної власності та виявлено низку напрямів її подальшого розвитку, що виражаються в процесах глобалізації законодавства, переході від охорони зафіксованих на матеріальних носіях прав до захисту інформації.

Констатовано, що існуюча парадигма інтелектуальної власності і засноване на ній адміністративно-правове регулювання не відображають специфіки суспільних відносин в інформаційному суспільстві. Пріоритетність принципу повного контролю правовласника за використанням об'єкта інтелектуальних прав призводить до того, що розвиток законодавства в сфері інтелектуальної власності здійснюється у формі посилення захисту інтелектуальних прав, а не в формі адаптації до потреб інформаційного суспільства та інноваційної діяльності.

Підкреслено, що формування концептуально єдиного "правового простору" для адміністративно-правового регулювання відносин у сфері інтелектуальної власності безпосередньо визначає ефективність самого процесу інноваційного розвитку. Дотримання єдиного концептуального підходу при виробленні стратегії розвитку багато в чому визначить і сам результат.

Ключові слова: інтелектуальна власність, адміністративно-правове регулювання, охорона інтелектуальної власності, суб'єкти охорони інтелектуальної власності.