Leontii Chystokletov

Леонтій Чистоклетов
Національний університет "Львівська політехніка",
доктор юридичних наук, професор,
професор кафедри
адміністративного та інформаційного права
Навчально-наукового інституту права,
психології та інноваційної освіти
leontii.h.chystokletov@lpnu.ua
ORCID ID: https://orcid.org/0000-0002-3306-1593

НАЦІОНАЛЬНА ПОЛІЦІЯ ЯК СКЛАДОВА СЕКТОРУ БЕЗПЕКИ ТА ОБОРОНИ У ПРОТИДІЇ РОСІЙСЬКІЙ АГРЕСІЇ В УКРАЇНІ

Узагальнено, на підставі теоретико-правового аналізу, особливості діяльності поліції як складової сектору безпеки та оборони в період російської агресії.

Доведено, що, незважаючи на повномасштабну неоголошену злочинну навалу, Збройні сили України за потужною фінансовою та воєнною підтримкою західних партнерів переможно долають спротив російських окупантів та здійснюють планомірний контрнаступ на "другу в світі переможну російську армію" й при цьому щоденно, героїчно перемелюючи військову техніку та живу силу ворога, далекоглядно приймають стратегічні рішення щодо реформування діяльності органів публічної влади, і насамперед суб'єктів сектору безпеки та оборони.

Вказано на прорахунки, які були допущенні в організації забезпечення оборонної промисловості, очолюваної оборонно-промисловим концерном "Укроборонпром". Проте, вже з початку лютого 2022 року державою був прийнятий ряд законодавчих змін, спрямованих на удосконалення сучасної моделі ЗСУ, правоохоронних органів й оборонно-промислового комплексу та приведення їх до стандартів НАТО та Європейського Союзу.

Стан діяльності поліції як суб'єкта сектору безпеки та оборони у період воєнного стану доводить, що українські правоохоронці разом із Збройними силами України зухвало дають відсіч злочинному російському нападу, боронячи життя та здоров'я українського населення, відстоюючи територіальну цілісність та незалежність України. Констатовано, що одним із важливих факторів щодо оптимізації діяльності поліції в період війни є прояви турботи державних органів щодо поліпшення їх соціального захисту.

Зазначено, що поліція, окрім виконання своїх обов'язків у період воєнного стану, спрямованих на виявлення та притягнення до відповідальності злочинців, розшук зниклих безвісті осіб, превентивних заходів щодо охорони публчного порядку та безпеки, здійснює з ризиком для життя та здоров'я заходи, пов'язані із розмінуванням саперами Національної поліції ворожих мін та знищення нерозірваних снарядів.

У роботі зазначено, що, незважаючи на ряд прийнятих в період воєнного стану нормативно-правових актів, спрямованих на покращення умов проходження служби поліцією, залишаються невирішені проблеми щодо: посилення адміністративної та кримінальної відповідальності за вчинення адміністративних правопорушень та воєнних злочинів; скасування середньої заробітної плати за місцем роботи; неурегульованості порядку вручення повістки до територіальних центрів комплектування тощо.

Доведено, що під час виконання своїх обов'язків у період російсько-української війни поліцією використовуються не лише організаційно-правові форми та методи з широкою участю сил безпеки та оборони, територіальної оборони та громадських формувань, але відточуються майстерність щодо проведення оперативно-розшукових заходів, спрямованих на протидію злочинності та ліквідації ворожих диверсійних груп, що дає змогу поліції вирішувати визначені завдання у протидії російській агресії в умовах воєнного стану.

Ключові слова: Національна поліція, сектор безпеки та оборони, Збройні сили України, російсько-українська війна, охорона публічного порядку та безпеки, громадські формування, воєнний стан.

ЦИВІЛЬНЕ ПРАВО І ПРОЦЕС

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Iryna Batko
Lviv Polytechnic National University,
assistant of the Department of Administrative and Information Law
Institute of Jurisprudence, Psychology and Innovative Education
iryna.i.batko@lpnu.ua
ORCID ID: https://orcid.org/0000-0002-5561-2747

ESTABLISHMENT AND DEVELOPMENT OF LEGISLATIVE REGULATION OF INDUSTRIAL DESIGNS AS OBJECTS OF INTELLECTUAL PROPERTY LAW IN UKRAINE

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Analyses the coverage of topical issues of formation and development of legal protection of industrial designs. The author analysed the legal regulation of the studied relations and identified the main stages of its development. The purpose of this article is a legal analysis of the provisions of the legislation of Ukraine regarding the formation and development of the legal regulation of industrial designs, the definition of debatable legislative provisions and the expression of proposals for the improvement of the relevant legal regulation. Research methods. There were used a systematic method (when clarifying the place of an industrial design in the system of objects of industrial property rights), a comparative method (when comparing the stages of development of national legislation). The historical method was used to study the formation and development of legislation in the field of industrial property in a chronological sequence, starting from 1991 and ending with the present; formal-legal method - for a comprehensive characterization of the legislation of Ukraine regarding industrial designs. The method of scientific interpretation of law was used to clarify the content of relevant legal norms. Conclusions. It has been proven that the formation of the legislation of Ukraine, which regulates relations regarding the emergence of rights to industrial designs, their implementation and protection, took place in several stages. It was established that the first stage lasted during 1991–2003 (the initiation of domestic legislation on industrial property took place), the second stage lasted during 2003–2014, during which the development of national legislation in this area took place, the third stage began in 2014. and continues until now (harmonization of national legislation in the field of industrial property with EU law is taking place). It has been proven that after Ukraine gained independence, there was practically no legal regulation of industrial designs in Ukraine. It was established that the only normative act that contained at least a few norms regarding industrial designs was the Civil Code of Ukraine of the Ukrainian SSR. It has been proven that the first regulatory act that regulated relations regarding industrial designs was the Temporary Provision on Legal Protection of Industrial

Property Objects and Innovative Proposals in Ukraine, which played an important role in the subsequent development of legislation on industrial designs. It is substantiated that the adoption of the Law of Ukraine "On the Protection of Rights to Industrial Designs" dated 12.15.1993 was the next important step in the establishment of legal regulation of the studied relations, since this law very thoroughly normalized the relations arising in connection with the acquisition and exercise of rights on industrial samples. It is substantiated that the second stage in the formation and development of the legislation on industrial designs was determined by the adoption of the Civil Code of Ukraine in 2003, in connection with this, many legislative provisions were significantly improved, which subsequently operated for about 20 years. It was established that the main legislative innovations (2003) were as follows: the conditions of patentability were changed, the novelty content of an industrial design was improved, the procedure for conducting an examination of an application was changed, the procedure for the publication of the grant of a patent and patent registration was improved, the procedure for appealing the decision of the patent office on an application for an industrial design was changed, the legal norms regarding the use of an industrial design, the termination of patent validity, and the protection of rights to industrial designs have been improved. It was established that the third stage regarding the development of legislation on industrial designs began in 2014 (signing of the Association Agreement between Ukraine and the EU) and continues to this day. It has been established that the Association Agreement between Ukraine and the EU contains a large Section on intellectual property, several articles are devoted to industrial designs (Articles 212–218). It is substantiated that these articles laid the foundation for the future reform of the legislation of Ukraine on industrial designs, which took place only in 2020. It has been proven that, as of today, the legislation of Ukraine regarding industrial property in general, and regarding industrial designs in particular, is as close as possible to EU standards in this area, and is able to properly regulate relations.

Key words: industrial design, intellectual property, patent, certificate, patentability conditions, protectionability criteria, EU standards.

Formulation of the problem. Industrial designs are common objects of industrial property law. In 2020, a comprehensive reform of the legislation on intellectual property took place, and the legislation on industrial designs was significantly reformed. The law on industrial designs really needed to change, as it had been practically unchanged for 20 years. During the independence of Ukraine, the legal provisions regulating relations regarding the acquisition of rights to industrial designs, their exercise, termination and protection were significantly changed several times. The last such change took place in 2020, which indicates the relevance of this scientific study. In general, legislation in the field of industrial property has gone through a significant path of reform. As of today, industrial designs as an object of intellectual property law have changed their legal regime taking into account the European experience of legal regulation. At the same time, for about 30 years (1991–2022), the legislative regulation of industrial designs did not always meet European standards and in some places was frankly outdated. Therefore, this article will discuss how the formation and development of legal regulation of industrial property relations (in particular, regarding industrial designs) took place, starting from Ukraines independence in 1991 and up to now.

Analysis of research and publications. Industrial designs as objects of industrial property law have been the subject of numerous scientific studies. At the same time, after the reform of the legislation on industrial property, which took place in 2020, only isolated scientific studies touch on the issue of the conditions for granting legal protection to an industrial design. Among scientific works, attention should be paid to the research of such scientists as O. Doroshenko, L. Rabotyagova [1, 2], Yu. Kapitsa [3], A. Kirylenko [4], N. Samolovova [5], O. Zhikharev [6], L. Tarasenko [7, 8], Yu. Gladyo [9] and others. At

the same time, these works only to a small extent pay attention to certain aspects of the formation and development of legislation on industrial designs, focusing their attention on the characteristics of the industrial design itself as an object of industrial property law. Also, the updated legislation on industrial designs gives rise to many debatable issues regarding the enforcement of the relevant norms, which determines the relevance of this scientific study.

The purpose of this article is a legal analysis of the provisions of the legislation of Ukraine regarding the formation and development of the legal regulation of industrial designs, the definition of debatable legislative provisions and the expression of proposals for the improvement of the relevant legal regulation.

Main material presentation. The formation of the legislation of Ukraine, which regulates relations regarding the emergence of rights to industrial designs, their implementation and protection, took place in several stages.

In the scientific literature, it is noted that the formation and development of the national legislation of Ukraine in the field of industrial property can be divided into the following stages:

I. 1991–2004 – initiation (establishment) of domestic legislation on industrial property.

II. 2004–2014 – development of national legislation in this area.

III. 2014 and until now – harmonization of national legislation in the field of industrial property with EU law and improvement of legislation taking into account the development of the digital environment [9, p. 8].

We agree with this approach and note that the really key years in which the beginning of a certain new stage took place were 1991 – the year Ukraine gained independence and the beginning of the formation of domestic legislation in all areas; 2004 – is the year of entry into force of the Civil Code of Ukraine, which is the main act of civil legislation and which contained basic legislative provisions on intellectual property rights (book four), including on industrial designs; 2014 – Is the year Ukraine signed the Association Agreement with the European Union, in which numerous provisions related to the adaptation of domestic legislation on intellectual property (including industrial designs) to EU standards.

After Ukraine gained independence, there was practically no legal regulation of industrial designs in Ukraine. The only normative act that contained at least a few norms regarding industrial designs was the Civil Code of Ukraine of the Ukrainian SSR, which continued to operate in the future. In particular, Art. 520-1 of the Civil Code of the Ukrainian SSR contained the provision that:

– the author of the industrial design has the right to authorship of the industrial design and has exclusive rights to the industrial design. At the same time, the author could be issued either a certificate of authorship or a patent (certificate of property rights). The author received a certificate of authorship in the event that he transferred exclusive rights to the industrial design to the state;

– the states exclusive right to an industrial design (in case of transfer of this right by the author) was valid for 10 years, on the other hand, the exclusive right to an industrial design, which was based on a patent, was valid for five years with the possibility of extending the term of legal protection for another five years.

These were actually the only legal provisions in this area. There was a real lack of legal regulation in relation to other objects of industrial property law (inventions, utility models, trademarks). Therefore, in September 1992, in order to ensure the legal protection of industrial property objects and for the effective functioning of the unified patent system, the President of Ukraine approved the Provisional Regulation on the legal protection of industrial property objects and innovative proposals in Ukraine [10]. This provision applied to industrial designs until the adoption of the Law of Ukraine “On Protection of Rights to Industrial Designs” in December 1993.

At the same time, the Temporary Regulation on the legal protection of industrial property objects and innovative proposals in Ukraine (hereinafter referred to as the Temporary Regulation) played an

important role in the establishment of legislation on industrial designs, since as of 1992 it provided provisions that qualitatively regulated these relations. In particular, the characteristics of the industrial sample were given. Thus, in accordance with Clause 7 of the Provisional Regulation, an industrial design includes a shape, drawing, colouring or a combination thereof, which determines the appearance of an industrial product, and which is reflected through the essential features of the industrial design, which determined its aesthetic and ergonomic features.

Separate attention should be paid to the conditions of patentability of an industrial design, namely, the Provisional Regulation provided that a patent is issued for an industrial design that is new, original and industrially suitable. This was a rather progressive norm, which for unknown reasons did not make it into the Law on Industrial Designs (1993), since patentability under the new law was limited to novelty only. Instead, adopting the positive European experience, only in 2020, as part of the reform of industrial property legislation, such a condition of patentability (criterion of protectionability) as originality (individual character) was returned. It should be noted that in the EU countries, this criterion of patentability of an industrial design was almost always present. Therefore, the Provisional Provision quite progressively normalized the patentability of an industrial design. It was also established that the right to an industrial design is confirmed by a patent, which certifies both the authorship of the industrial design and the exclusive right to use it. The term of legal protection was also increased, which was established for 10 years with the possibility of extension for another 5 years.

The Law of Ukraine "On the Protection of Rights to Industrial Designs" dated 12/15/1993 (hereinafter the Law on Industrial Designs) was the next important step in establishing the legal regulation of the studied relations. This law was adopted together with other legislative acts that regulated relations in the field of industrial property (regarding inventions, utility models, signs for goods and services).

This law very thoroughly normalized the relations arising in connection with the acquisition and exercise of rights to industrial designs.

In particular, the conceptual apparatus was defined (department, industrial design, author, patent, application, priority of the application, etc.), not only the conditions of patentability, but in general the conditions of granting legal protection – non-contradiction to public interests, moral norms and compliance with the conditions of patentability (compared to Provisional the provision left only novelty and industrial suitability). The subjects of the right to apply for an industrial design were also characterized, which could be not only the author, but also the employer or legal successor. The procedure for drawing up an application for registration of an industrial design, the procedure for its submission and consideration by the patent office was provided in detail.

The law provided intellectual property rights to the industrial design, enshrining the traditional triad of property rights – the right to use the industrial design, the right to allow its use by third parties, and the right to prohibit such use by third parties. In addition, the duties of the patent owner were stipulated, which consisted in the obligation to issue compulsory licenses in cases provided for by law (non-use, insufficient use of the industrial design within 3 years, dependent license), and a list of actions that were not recognized as a violation of patent rights. Separately, the law regulated the procedure for the termination of the patent and the procedure for declaring it invalid.

In general, the adoption of the Law on Industrial Designs in 1993 should be positively evaluated, as it became the first legislative act that regulated the relations regarding industrial designs at the level of law. By the way, this law is formally in force as of today. But it is worth noting that the law of December 15, 1993 is only formally effective, since there is not a single norm in the 1993 edition – all norms, articles, sections of the law are set out in the editions of various laws that were adopted over the next 30 years. Although this only shows that the legislator sought to improve the regulation of relations, which over time required new changes to the law.

The second stage in the formation and development of legislation on industrial designs was determined by the adoption of the Civil Code of Ukraine in 2003 (entered into force in 2004). In order to harmonize the legislative provisions of the law on industrial designs with the new (at that time) Civil Code

of Ukraine, in 2003, numerous provisions of the law were significantly changed, which were brought into line with the Civil Code of Ukraine. Therefore, the second stage began precisely in 2003 by adopting amendments to the special law, which are consistent with the provisions of the Civil Code of Ukraine, which entered into force in 2004. In particular, the conditions of patentability were changed by removing industrial suitability. The novelty content of the industrial design was also improved. The law changed the procedure for examination of the application, the procedure for publication of the issuance of a patent and registration of a patent. The mechanism for appealing the patent office's decision on an industrial design application was also changed. Other articles of the Law on Industrial Designs (regarding the use of an industrial design, termination of patent validity, protection of rights to industrial designs) have also undergone changes. In general, the legislative changes of 2003 were quite radical in nature. The law in this version (with minor changes and additions introduced in 2012 regarding the procedure for the examination of the application) was valid until 2020.

The third stage regarding the development of legislation on industrial designs began in 2014 and continues to this day. In particular, in 2014, the Association Agreement between Ukraine and the EU was signed. The agreement contained a rather large section on intellectual property. Several articles were devoted specifically to industrial designs (Articles 212–218). These articles laid the foundation for the future reform of the legislation of Ukraine on industrial designs, which took place only in 2020. In particular, the Association Agreement provided for the following innovations in the legal regulation of industrial designs:

– the conditions of patentability (protectability) have been expanded: the industrial design must be new and must have an individual character;

– the novelty of the industrial model is characterized in a new way;

– the essence of individual character is defined;

– the division of industrial samples into registered and unregistered ones was introduced;

– the maximum term of granting legal protection to an industrial design has been increased to 25 years;

– cases that are not considered to be violations of the rights to an industrial design are defined.

The specified provisions of the Association Agreement between Ukraine and the EU were implemented into national legislation in 2020 during the reform of industrial property legislation. In particular, in July 2020, Law No. 815-IX "On Amendments to Some Legislative Acts of Ukraine on Strengthening the Protection and Protection of Rights to Trademarks and Industrial Designs and Combating Patent Abuse" was adopted, which detailed the provisions of the Association Agreement between Ukraine and the EU, and made significant changes to the Law on Industrial Designs. In the scientific literature, it is rightly noted that the reform of any area of Ukrainian legislation is impossible without a creative understanding of the experience of foreign countries, including in the field of patent law [11, p. 33].

Characterizing these changes, one should emphasize the most fundamental of them. In accordance with Part 2 of Art. 5 of the Law on Industrial Designs, an industrial design can be only the appearance of a product or its part, which is determined, in particular, by lines, contours, colour, shape, texture and/or material of the product, and/or its decoration. The binding of the industrial design to aesthetic and ergonomic needs has disappeared from the law. In the scientific literature, this approach was justified as quite appropriate, since the law primarily aims to protect the product manufacturer from copying the form, regardless of whether it has an aesthetic effect on the end consumer [12, p. 75]. At the same time, other authors point out that industrial designs are at the crossroads of art and technology, as their developers try to create products whose shape and appearance meet both the aesthetic preferences of consumers and their expectations regarding functional characteristics [13, p. 8].

A list of objects that cannot be registered as industrial designs is defined: objects of unstable form made of liquid, gaseous, lose or similar substances, etc.; the result of intellectual, creative activity in the field of artistic design, embodied or applied in a product, which is part of a composite product and is invisible during normal use of the product; features of the appearance of the product, determined exclusively by its technical functions, etc.

The law clearly distinguished between registered and unregistered industrial designs. Certainly, the correct approach is to give legal protection to unregistered industrial designs, the design of which can usually only be relevant for a short period of time. Scientific literature draws attention to the fact that, for example, in the field of fashion, numerous collections are updated every two weeks, which makes it impossible to protect each individual item as a registered industrial design [6, p. 15], and that is why unregistered industrial designs should be given special legal protection without any formalities (such designs should be protected without registration) [7, p. 198].

The security document certifying the rights to an industrial design has been changed (a certificate instead of a patent). The term of validity of property rights to a registered industrial design is five years, with the possibility of extending the term of legal protection one or more times for another 5 years, but the total term of validity cannot exceed 25 years. The term of legal protection of an unregistered industrial design is three years from the date of its publication.

Attention should be paid to the characteristic of individual character as a criterion of guarding ability. In particular, an industrial design is recognized as having an individual character if the general impression it makes on an informed user differs from the general impression made on such a user by any other industrial design brought to public knowledge. The scope of legal protection granted to a registered industrial design is determined by the representation of the industrial design (rather than the set of essential features, as previously provided), and includes any other industrial design that does not give an informed user a distinctive overall impression. The law does not provide a definition of an informed user, while this concept is evaluative and may be applied differently for different types of goods.

The law improved the procedure for submitting and considering an application for registration of an industrial design, allowing submission of an application in electronic form with further electronic filing of the application.

The rights of the holder of the industrial design certificate have also undergone changes, and the rights of the owner of the registered and unregistered industrial design have been demarcated.

Undoubtedly, the introduction of an extrajudicial procedure for invalidating industrial design rights was a significant achievement. Such a decision can be taken by the Appeals Chamber of the national intellectual property body. This mechanism is important to combat the so-called “patent trolling” (registration of well-known products as industrial designs). The out-of-court procedure is characterized by the fact that the consideration of the case is carried out quickly, without necessarily involving the conclusion of a forensic examination.

Conclusions. National legislation on industrial designs has undergone a complex and long process of formation and development. At the first stage (1991–2003), the basic foundations of the corresponding legislative regulation were laid. The first Law on Industrial Designs (1993) was an extremely relevant and necessary regulator that was in effect for about 10 years. The adoption of the Civil Code of Ukraine initiated the second stage of formation and development of domestic legislation regarding industrial designs. Many legislative provisions were significantly improved, which continued to be in effect for about 20 years. The need to adapt the legislation of Ukraine on industrial property to EU standards led to the beginning of the third stage of the development of the relevant legal regulation, which took place in 2020 through the adoption of the relevant law, which, again, significantly and qualitatively changed the state of legal regulation of relations regarding industrial designs. As of today, the legislation on industrial property in general, and on industrial designs in particular, is as close as possible to EU standards in this area, and is able to properly regulate relations in this area.

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Ірина Батько
Національний університет “Львівська політехніка”,
асистент кафедри адміністративного та інформаційного права
Навчально-наукового інституту права,
психології та інноваційної освіти
iryna.i.batko@lpnu.ua
ORCID ID: https://orcid.org/0000-0002-5561-2747

СТАНОВЛЕННЯ ТА РОЗВИТОК ЗАКОНОДАВЧОГО РЕГУЛЮВАННЯ ПРОМИСЛОВИХ ЗРАЗКІВ ЯК ОБ’ЄКТІВ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ В УКРАЇНІ

Висвітлено низку актуальних питань становлення та розвитку правової охорони промислових зразків. Проаналізовано правове регулювання досліджуваних відносин та визначено основні етапи його розвитку. Метою статті є правовий аналіз положень законодавства України щодо становлення та розвитку правового регулювання промислових зразків, визначення дискусійних законодавчих положень та висловлення пропозицій щодо вдосконалення відповідного правового регулювання. Використано системний метод (при з’ясуванні місця промислового зразка в системі об’єктів права промислової власності), порівняльний метод (при порівнянні етапів розвитку національного законодавства). Історичний метод застосовано для дослідження становлення та розвитку законодавства у сфері промислової власності у хронологічній послідовності, починаючи від 1991 р. і закінчуючи сьогоденням; формально-юридичний метод – для комплексної характеристики законодавства України щодо промислових зразків. Метод наукового тлумачення права – використано для з’ясування змісту відповідних правових норм. Доведено, що становлення законодавства України, яке регулює відносини щодо виникнення прав на промислові зразки, їх здійснення та захист, відбувалося у кілька етапів. Встановлено, що перший етап тривав протягом

1991–2003 рр. (відбулося започаткування вітчизняного законодавства щодо промислової власності), другий етап тривав протягом 2003–2014 рр., під час якого відбувся розвиток національного законодавства у цій сфері, третій етап розпочався у 2014 р. і триває дотепер (має місце гармонізація національного законодавства у сфері промислової власності з правом ЄС). Доведено, що після здобуття незалежності в Україні було практично відсутнє правове регулювання промислових зразків. Встановлено, що єдиним нормативним актом, який містив хоча б кілька норм щодо промислових зразків, був Цивільний кодекс України УРСР. Зазначено, що першим нормативним актом, який врегульовував відносини щодо промислових зразків, було Тимчасове положення про правову охорону об'єктів промислової власності та раціоналізаторських пропозицій в Україні, яке відіграло важливу роль у наступному становленні законодавства про промислові зразки. Зазначено, що прийняття Закону України "Про охорону прав на промислові зразки" від 15.12.1993 р. було наступним важливим кроком у становленні правового регулювання досліджуваних відносин, оскільки цей закон дуже ґрунтовно унормував відносини, що виникають у зв'язку з набуттям і здійсненням прав на промислові зразки. Обґрунтовано, що другий етап у становленні і розвитку законодавства про промислові зразки був зумовлений прийняттям Цивільного кодексу України у 2003 р., у зв'язку з цим було суттєво вдосконалено багато законодавчих положень, які загалом діяли майже 20 років. Встановлено, що основні законодавчі новації (2003) були такими: змінено умови патентоспроможності, удосконалено зміст новизни промислового зразка, змінено порядок проведення експертизи заявки, вдосконалено порядок публікації про видачу патенту та реєстрацію патенту, змінено порядок оскарження рішення патентного відомства за заявкою на промисловий зразок, удосконалено правові норми щодо використання промислового зразка щодо припинення дії патенту щодо захисту прав на промислові зразки. Визначено, що третій етап щодо розвитку законодавства про промислові зразки розпочався у 2014 р. (підписання Угоди про асоціацію між Україною та ЄС) і триває на сьогодні. Встановлено, що Угода про асоціацію між Україною та ЄС містить великий за обсягом розділ про інтелектуальну власність; кілька статей присвячені саме промисловим зразкам (ст. 212–218). Обґрунтовано, що ці статті заклали основу майбутнього реформування законодавства України про промислові зразки, яке відбулося лише у 2020 р. Доведено, що станом на сьогодні законодавство України щодо промислової власності загалом, і щодо промислових зразків зокрема, є максимально наближеним до стандартів ЄС у цій сфері і здатне належно врегульовувати відносини.

Ключові слова: промисловий зразок, інтелектуальна власність, патент, свідоцтво, умови патентоздатності, критерії охороноздатності, стандарти ЄС.