
ЦИВІЛЬНЕ ПРАВО ТА ЦИВІЛЬНИЙ ПРОЦЕС

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STATE SYSTEM OF INTELLECTUAL PROPERTY PROTECTION IN UKRAINE: DEVELOPMENT TRENDS IN MODERN CONDITIONS

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Summary. Today, the protection of intellectual property rights and legitimate interests of citizens is guaranteed by Article 55 of the Constitution of Ukraine, which provides and guarantees to everyone who uses all national forms of legal protection, protection of rights and freedoms in court. According to the second part of Art. 124 of the Basic Law, the jurisdiction of the courts extends to any legal dispute and all legal relations arising in the state. In addition to the constitutional right to administrative and judicial protection of intellectual property, the rules of special legislation in the field of intellectual property also determine other types of protection. In particular, part of the first article. 52 of the Law of Ukraine «On Copyright and Related Rights», to protect their copyrights and (or) related rights, entities have the right in accordance with the established procedure to apply to the court and other authorities in accordance with their competence.

It is emphasized that the specifics of the protection of intellectual property is that there may be different ways to protect the violated subjective right to choose the person whose rights are violated. Today, the state system of intellectual property protection in Ukraine has an extensive system of state bodies involved in ensuring the protection of intellectual property.

Based on the analysis of normative legal acts and scientific opinions, the article analyzes the activities of public administration entities in the field of intellectual property protection (Ministry for Development of Economy, Trade and Agriculture, National Intellectual Property Authority, Ukrainian Institute of Intellectual Property, Department of Intellectual Property). It is noted that in connection with the reorganization of the state system of intellectual property protection, instead of a three-tier structure, a two-tier structure is proposed.

It is established that the current standing of the state system of intellectual property protection does not fully comply with international standards and principles in the field of intellectual property. It is proved that the presented state system of intellectual property protection contains significant shortcomings, the ways of improvement its activities are proposed.

Keywords: state system, structure, protection, intellectual property, functions, improvement

Introduction.

The state, as the most powerful tool for regulating public relations, performs the task of ensuring the protection of non-property and (or) property rights of intellectual property. For this task, it forms or creates legal tools for the mechanism of protection of violated subjective rights of owners of intellectual property in the form of executive and judicial authorities. The possibility of ensuring the protection of intellectual property by the executive and judicial authorities is based primarily on the provisions of the Constitution of Ukraine, special and international legislation in the field of intellectual property protection. However, frequent changes in the system of central executive bodies do not always have a positive effect on the standing of intellectual property protection in Ukraine.

Analysis of recent research and publications.

Considering the importance of the problem, in scientific circles, to the issue of the state system of intellectual property protection in Ukraine is given considerable attention. Among the scientists who devoted their works to various aspects of this issue, it is worth noting I. Abdulin, G. Androschuk, O. Orlyuk, Y. Osadchev, O. Korotun, O. Svyatotsky, V. Shestak and others. However, taking into account the existing problems in this area, a number of issues remain to be studied.

The purpose of the article is to identify some ways to improve the activities of the state system of intellectual property protection in ensuring the protection of subjective rights of owners of intellectual property.

Results.

The state influence of streamlining public relations in the study area is carried out in accordance with the rules of law, rights

and responsibilities, but current trends in legal regulation do not always take into account the objective regularity to ensure proper protection of intellectual property rights, and the rights that are related to certain legal regimes of objects of intellectual property rights, because the legislator does not always take into account the practical component, which acts as a guarantor of intellectual property protection.

Article 55 of the Constitution of Ukraine secures and guarantees for everyone using all national types of legal protection, protection of rights and freedoms in the judicial order. According to Part Two of Art. 124 of the Basic Law, the jurisdiction of the courts extends to any legal dispute and all legal relationship that occur in the state.

Except the constitutional right for administrative and judicial protection of intellectual property, the rules of the special legislation in the sphere of intellectual property specify such types of the protection. For example, according to Part One of Art. 52 of the Law of Ukraine «On Copyright and Related Rights» No. 3792-XII dated 23.12. 1993 (as amended by Law No. 703-IX dated June 16, 2020) to protect their copyrights and (or) related rights, the entities have a right in accordance with the established procedure to apply to the court and other authorities in accordance with their competence.

The specificity of the intellectual property protection is in the fact that there can be different ways of protection of the broken subjective right on the selection of an individual. In general, scientists consider the right of protection can be identified as given ability to an eligible individual to use measures provided by the legal norms to renew his violated rights of those who are challenged (Fundamentals of intellectual property law, 2012:16).

Nowadays the state system of the intellectual property protection in Ukraine

has an extensive system of state authorities involved in ensuring the protection of intellectual property.

Without diminishing the role of each of the public authorities in ensuring the protection of intellectual property, it should be noted that in accordance with the Regulation of Ministry for Development of Economy, Trade and Agriculture, approved by the Cabinet of Ministers of Ukraine dated 20.08.2014 No.459 (as amended by the Cabinet of Ministers No.1315 dated 23.12.2020) Ministry of Economy is the main body in the system of central executive authorities, which ensures the formation and implementation of state policy in the field of intellectual property.

In particular, in accordance with the Regulations, the Ministry of Economy interacts and coordinates with central executive bodies, other state authorities in the formation and implementation of state policy in the field of intellectual property, as well as to strengthen protection of intellectual property rights and coordinates the National Intellectual Property Authority.

According to the Law of Ukraine «On Amendments to Certain Laws of Ukraine Concerning the Establishment of a National Intellectual Property Authority» of June 16, 2020 No.703-IX, the National Intellectual Property Authority (NIPO) is a state organization that is a part of the state system of legal protection of intellectual property, defined at the national level by the Cabinet of Ministers of Ukraine as such, exercising powers in the field of intellectual property, defined by this Law, other laws in the field of intellectual property, acts of the central executive body that ensures the formation and implementation of state policy in the field of intellectual property, and the statute, and has the right to represent Ukraine in international and regional organizations.

Today, the functions of NIPO, in accordance with the order of the Cabinet of Min-

isters of Ukraine «On the National Intellectual Property Authority» dated 13.10.2020 No.1267-r – are performed by the state enterprise «Ukrainian Institute of Intellectual Property» (Ukrpatent). Despite the above, the Cabinet of Ministers of Ukraine did not make any changes that would indicate what powers Ukrpatent should exercise, whether it will operate in the structure of the latter – the Appeals Chamber, etc. These regulations could not provide the appropriate level of regulation of relations in the field of intellectual property, it shows their formal nature.

Thus, in the system of activity of public authorities there are problematic issues that affect the proper protection of intellectual property. It should be noted that the attention was paid at the problematic issues of the researched area in the Concept of reforming the state system of legal protection of intellectual property in Ukraine, approved by the order of 01.06.2016, No.402-r, which states that the state system of legal protection of intellectual property has shown low efficiency in solving key problems and the inability to ensure the development of intellectual property as an important element of the national innovation system and the basis of the innovative state economy. Imperfect and inert system of public administration of intellectual property has led to a lack of significant progress in adapting the legal framework to modern economic and political conditions (fight against «patent trolling», Internet piracy, meeting the needs of the IT industry, military industrial and agro-industrial complexes, etc.).

About problematic issues of the state system of intellectual property protection were also discussed in the National Strategy for the Development of Intellectual Property in Ukraine for the period up to 2020, where, instead of a three-tier structure: the Ministry of Economic Development and Trade of Ukraine; State Intellectual Property Service; the state enterprise «Ukrainian Institute of Intellectual Property», the state

enterprise «Intelzahiś», the state organization «Ukrainian Agency for Copyright and Related Rights» – a two-tier structure of the state system of intellectual property protection was introduced through the liquidation of the State Intellectual Property Service and the state enterprise «Intelzahiś», transformation of the state organization «Ukrainian Agency for Copyright and Related Rights» into a non-governmental organization of collective management. On the basis of the state enterprise «Ukrainian Institute of Intellectual Property» – the National Intellectual Property Authority is created.

In connection with the termination of the State Intellectual Property Service, the functions of this body are assigned to the Ministry of Economic Development (now the Ministry of Economy), a structural unit of the Ministry of Economy is the Intellectual Property Department, acting in accordance with the Regulations on the Department of Intellectual Property, approved by the order of the Ministry of Economic Development from 15.06.2017 No.871.

The main tasks of the department are: ensuring the formation and implementation of state policy in the field of intellectual property; organization in accordance with the established procedure of examination of applications for intellectual property rights and issuance of patents/certificates for intellectual property rights; ensuring the determination of authorized institutions for the examination of applications for intellectual property rights and instructing them to conduct such an examination; organization of maintaining state registers of intellectual property rights; ensuring the coordination and control of work to ensure the functioning of the state system of legal protection of intellectual property; coordination of cooperation with the European Communities and their Member States in the field of intellectual property, etc.

A characteristic feature of the legal status of the Department of Intellectual

Property is that the previously mentioned powers were assigned to the State Intellectual Property Service. In addition, the Ministry of Economic Development issued an order «On the establishment of the state organization» National Intellectual Property Office» dated 24.05.2018 No.718 and approved its Statute.

Obviously, as it was noted by O. Dukhovna, the establishment of state organization «National Intellectual Property Office» does not agree with the approach to the creation of NIPO proclaimed in the Concept – the first submission of the draft law and the formation of NIPO on the basis of the state enterprise «Ukrainian Institute of Intellectual Property».

It also does not correspond to the announced course to create a «single window» for public services in the field of intellectual property and a national course to optimize the number of state-owned enterprises (Dukhovna, 2019). K. Tishchenko also draws attention to the fact that with the establishment of the Ministry of Economic Development and Trade of Ukraine a new state organization – the National Intellectual Property Office – this state non-profit organization is designed to fulfill all strategic tasks of the state on intellectual property, as well as current instructions of the Ministry of Economic Development.

From now on, all powers vested in the relevant laws, governing intellectual property relations will be transferred to the newly established National Intellectual Property Office. However, from the analysis of the Statute of NIPO and the order of the Ministry of Economic Development on its creation it is impossible to give a clear answer, where in the system of intellectual property is the place of NIPO.

It seems as if he is standing next to all the authorities, but does not intersect with any of them. The statute does not define the powers under which the NIPO will engage

directly in expert or registration activities. That is, for example, «Ukrpatent» and the relevant department of the Ministry of Economic Development will continue to register trademarks for goods and services and various aspects of copyright. Management of intellectual property in general is left to the Ministry of Economic Development, which, although it has transferred many powers to the NIPO, can give it mandatory instructions (Tishchenko, 2019).

Emphasizing the activities of the NIPO, I. Abdulina draws attention to the fact that the only real function of the established office is the accounting and distribution of fees for actions related to the protection of intellectual property rights, which has a corruption component and is a reason to appeal to anti-corruption bodies of Ukraine. She believes that the Ministry of Economic Development in the field of intellectual property failed the reform. It did not ensure the planned changes in legislation. Only one thing was done on time: the state enterprise «Intelzahiś» was liquidated. There was a whole history of promises and misunderstandings with the collective management of copyright. The Ministry of Economic Development showed its complete incompetence and inability to organize the planned result. As a result, Ukraine was again included in the so-called «pirate list 301» (Abdulina, 2019). It should be noted that the breadth of the discussed issue requires attention to the activities of the Council on Intellectual Property, as a government advisory body established by the Cabinet of Ministers on 07.02.2018 No. 90, the task of which is to coordinate the work of state executive bodies, law enforcement agencies, the judiciary, public associations and industry associations, academia, as well as the owners of intellectual property rights in order to overcome problematic issues related to strengthening the protection of intellectual property rights, integration of Ukraine into the international and European intellectual space; stimulation

of inventive activity, commercialization of results of intellectual and creative activity in Ukraine. Among the important tasks of the Council is to promote the elimination of threats related to Ukraine's inclusion in List 301 in the context of the «Special Report 301» of the Office of the US Trade Representative on the state of protection of intellectual property rights.

Conclusions and prospects.

A study of the state system of intellectual property protection and in particular the provisions of the National Intellectual Property Office showed that the status of «national» should provide for the protection of intellectual property by this body for all objects of intellectual property rights, including breeding achievements in crop production (plant varieties) and animal husbandry (animal breed).

This requires determining the competence of each of the structural units of the Ministry of Economic Development, Trade and Agriculture, due to this a transparent two-tier structure of the state system of intellectual property protection will be achieved, and «intermediate» state organizations must cease their activities. If the Ministry of Economic Development, Trade and Agriculture of Ukraine ensures the formation and implementation of state policy in the field of intellectual property, then the National Intellectual Property Authority must ensure the implementation of tasks in accordance with a set of specific powers in the field of intellectual property.

Creation of a new organizational and legal mechanism, formation of governing and managed systems, formation of new subjects of public administration, construction of new links in the structure of the administration are necessary for streamlining and stability of the state system in accordance with international standards and principles to ensure adequate protection of intellectual property in the state.

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О.П. Світличний (2021). ДЕРЖАВНА СИСТЕМА ОХОРОНИ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ В УКРАЇНІ: ТЕНДЕНЦІЇ РОЗВИТКУ В СУЧАСНИХ УМОВАХ.

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Анотація. На сьогодні захист прав інтелектуальної власності та законних інтересів громадян гарантується ст. 55 Конституції України, яка передбачає та гарантує кожному, хто використовує всі національні форми правового захисту прав і свобод у суді. Відповідно до частини другої ст. 124 Основного закону юрисдикція судів поширюється на будь-який юридичний спір та усі правовідносини, що виникають у державі. Окрім конституційного права на адміністративний та судовий захист інтелектуальної власності, норми спеціального законодавства у сфері інтелектуальної власності визначають й інші види захисту. Зокрема, частина першої ст. 52 Закону України «Про авторське право та суміжні права» передбачає, що для захисту своїх авторських прав та (або) суміжних прав суб'єкти мають право в установленому порядку звертатися до суду та інших органів влади відповідно до їх компетенції.

Підкреслюється, що специфіка захисту інтелектуальної власності полягає в тому, що можуть бути обрані різні способи захисту порушеного суб'єктивного права особи, права якої порушені. На сьогодні державна система захисту інтелектуальної власності в Україні має розгалужену систему державних органів, що займаються забезпеченням захисту інтелектуальної власності.

На основі аналізу нормативно-правових актів та наукових висновків стаття аналізує діяльність суб'єктів державного управління у сфері охорони інтелектуальної власності (Міністерство розвитку економіки, торгівлі та сільського господарства, Національне управління інтелектуальної власності, Український інститут інтелектуальної власності, Департамент інтелектуальної власності). Зазначається, що у зв'язку з реорганізацією державної системи захисту інтелектуальної власності замість трирівневої структури пропонується дворівнева структура.

Встановлено, що нинішній стан державної системи захисту інтелектуальної власності не повністю відповідає міжнародним стандартам та принципам у галузі інтелектуальної власності. Доведено, що представлена державна система захисту інтелектуальної власності містить суттєві недоліки, запропоновано шляхи вдосконалення її діяльності.

Ключові слова: державна система, структура, захист, інтелектуальна власність, функції, вдосконалення