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Breeding achievement in animal breeding as an object of intellectual property law and international experience of its protection

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Intellectual property rights are prescribed in the Universal Declaration of Human Rights. A patent for an animal breed is the exclusive right of the inventor to its breeding achievement, it is a legal monopoly ensured by the state, and patent protection makes it impossible to use it commercially without the consent of its owner. The modern-day challenges are directly related to ensuring food security. The practical application of breeding achievements in animal husbandry lies in the genetic improvement of animals in the "economic aspect", which directly affects the level of investment and remuneration for breeders, and from this the need for effective legal protection of intellectual property rights increases. In this regard, the purpose of this paper was to investigate the legal regulation of intellectual property rights for breeding achievements in animal husbandry, proposals for its improvement through the study of

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international practices. During this study, philosophical, general scientific and special legal methods of scientific cognition were used, which were chosen considering the purpose and objectives of this study. Based on the analysis of regulations governing the procedure for obtaining legal protection of breeding achievements in animal husbandry, the paper examines problematic positions and suggests ways to eliminate conflicts in the legal regulation of these issues. The international practices regarding the execution of law enforcement documents for breeders and the possibility of protecting their rights was also analysed. The materials of this paper are of practical value for further investments, improvements, and identification of new issues in research of breeding achievements in animal husbandry

Keywords: object of intellectual property rights, breeding achievement, breeding achievement in animal husbandry, protection of intellectual property rights

Introduction

From the depths of the Middle Ages, there were societies of early breeds for animal husbandry, which controlled the pedigree to protect the intellectual property rights of master breeders. The first specialized patent law applied to living organisms was the Plant Protection Act of 1930 in the United States. It prescribed what are commonly called the rights of plant breeders to propagate new varieties by asexual methods [1]. In the modern conditions of development and the state of crisis in the supply of food on a global scale, one of the rather weighty objects of intellectual property are breeding achievements as the results of activity in the form of animal breeds with given characteristics. According to the Concept of the State target program to develop the agricultural sector of the economy for the period until 2022 (the Concept) [2], the expected results include the creation and

effective management of the state register of breeding agricultural animals, by providing Ukrainian agricultural producers with modern selective breeding (genetic) resources and the growth of their export potential. However, according to the data of the National Academy of Agrarian Sciences, in Ukraine there is factually no breeding system in animal husbandry, and the state position, albeit ensuring the preservation of agricultural breeds of animals, domestic genotypes, which still retain the unique qualities of parental forms and steadily transmit them to their descendants.

The legal foundations of intellectual property rights for breeding achievements in animal husbandry were investigated by scientists as an economic direction, namely V.I. Antotenko, V.P. Borodai, M.A. Vitvytskyi, S.A. Voinalovych, H.I. Demydas, V.P. Kopan, V.I. Ladyka, O.V. Pichkur, and others, in

whose studies partial attention was paid to breeding achievements, as a result of the activities of zooengineers, veterinarians, and other specialists in agricultural sciences; and legal: N.O. Bahai, O.B. Butnik-Siverskyi, V.M. Yermolenko, V.S. Drobyazko, Yu.M. Kapitsa, T.H. Kovalchuk, O.V. Kokhanovska, O.O. Kulinich, V.I. Kurylo, O.M. Melnyk, O.P. Orliuk, M.V. Palladii, O.P. Svitlichnyi, O.O. Stefan, and others.

Results and Discussion

The development of patent legislation can change the existing legal conditions for competition and investment in the field of animal breeding, and therefore requires a higher level of awareness on the part of politicians, animal breeders, lawyers, and patent attorneys. In 2020, Ukraine adopted a law on the creation of the National Intellectual Property Authority (NIPA), which replaced the State Intellectual Property Service. According to the Concept, the agrarian sector of the economy, the basic component of which is agriculture, forms food, within certain limits, economic, ecological, and energy security, ensures the development of technologically related branches of the national economy and the creation of socio-economic conditions for rural development. However, according to the data of the State Statistics Service of Ukraine, in the structure of agricultural products in 2020, the cultivation of agricultural animals accounted for 12%, the index of agricultural products was 97.5% compared to the previous year, and the decrease in the number of

agricultural animals at the end of the year was: minus 7.1% for cattle, 5.4% for sheep and goats and minus 9% for poultry; only the number of pigs increased by 2.5% [3].

Among the ways to overcome existing problems in the field of animal husbandry is the implementation of measures to preserve and restore the diversity of breeds of agricultural animals according to the provisions of the Convention on the Protection of Biological Diversity. The most acute problems are still the lack of motivation for most business entities to increase the number of farm animals and increase the volume of livestock production. Along with this, industrial animal husbandry uses specialized, highly productive genotypes of imported breeding, which leads to the loss of genotypes of Ukrainian breeding and the emergence of the problem of a substantial decrease in genetic diversity, a decrease in the resistance of animals and a substantial dependence on the import of breeding (genetic) resources. Obviously, the preservation of agricultural breeds of animals is a complex and urgent problem not only for Ukraine, but also for other countries of the world. First of all, in terms of the choice of forms and methods and the minimum number of animals for conservation. The basis of the UN concept is the reproduction of the active part of the population using pure-bred breeding methods and the involvement of the rest for intensive use in the crossbreeding system. Therewith, the minimum number of sows for preservation is at least 100, and the main boars –

10 heads or the corresponding amount of sperm [4]. Although the Concept prescribes providing Ukrainian agricultural producers with modern breeding, breeding (genetic) resources and increasing the potential of their exports, improving and ensuring the effective maintenance of the state register of farm animals, introducing a system for assessing and determining the breeding value of animals, maintaining breeding records through the creation of automated information databases on breeding (genetic) resources, and the draft Concept of the State target program for the development of the cattle industry until 2030 presented to the Ministry of Economy offers only support for the cattle industry with a focus on reducing the cost of attracting investment.

However, the implementation of any program is associated with financing, which in modern conditions is carried out improperly. The mechanism for the use of funds was provided for in the state budget under the program "Selection in livestock and poultry breeding at enterprises of the agro-industrial complex" and was carried out according to the Resolution of the Cabinet of Ministers of Ukraine No. 515 "On Approval of the Procedure for the Use of Funds Provided for in the State Budget for the Implementation of the Program of Selection in Livestock and Poultry Breeding at Enterprises of the Agro-Industrial Complex" dated May 18, 2011, which provided funds for works of national significance for the development and implementation of programs, namely selection by breeds

and preservation, maintenance of the gene pool in sperm banks, embryo banks and the gene pool bank of silkworms of existing, local, and endangered breeds. But over time, the funds began to be allocated only for reimbursement of the cost of purchased breeding animals, bees, sperm, and embryos, which is provided to legal entities and individual entrepreneurs, regardless of the legal form and form of ownership, for Ukrainian or imported breeding animals, bees, sperm purchased by them and embryos in size (up to 80% of the cost).

The analysis of regulations in the field of development of breeding work in animal husbandry suggests the need to support own breeding works and introduce appropriate legal protection of intellectual property rights for breeding achievements in the field of animal husbandry.

Since currently a breeding achievement in the field of animal husbandry is a group of breeding animals (breed, breed type, line, family, etc.) created as a result of purposeful creative activity, which has new genetic characteristics that are persistently transmitted to offspring, and in terms of productivity exceeds previous types of animals, equated to inventions (Articles 1 and 25 of the Law of Ukraine No. 3691-XII "On Breeding Matters in Livestock Breeding" dated 12.15.1993 (the Law).

Moreover, the achievements of national breeding in various livestock industries have extensive experience, namely: dairy cattle breeding: Ukrainian black-spotted dairy, Ukrainian red-spotted dairy, Ukrainian

red dairy breeds and intrabreed and zonal types; meat cattle breeding: Ukrainian meat, Volyn meat, Polish meat, southern meat; pig farming: Poltava factory type of meat pigs, Poltava meat breed, red-belt specialized meat line of pigs, UVB-1, UVB-2; sheep breeding: types of Ascanian thin-fleece sheep, meat-wool intensive types of sheep; poultry farming: synthetic lines of laying hens, crosses of laying hens, autosex lines of poultry; horse breeding: Ukrainian riding breed of horses; fishery: breeds of carp; carp-crucians [5].

According to Article 1 of the Law, a breeding animal is a pure-bred animal or an animal obtained under an approved breed improvement program, registered in the state books of breeding animals, has a breeding (genetic) value and can be used in the breeding process according to breeding programs; the objects of breeding business in animal husbandry are cattle, pigs, sheep, goats, horses, poultry, fish, bees, silkworms, fur animals, and rabbits, which are bred to obtain certain products from them (hereinafter – animals), and subjects of breeding business in animal husbandry are as follows: owners of breeding genetic resources; enterprises, institutions, and organizations regardless of the form of ownership and individuals-entrepreneurs taking part in the production, preservation, use, creation, determination of the breeding value of breeding (genetic) resources, trade in breeding (genetic) resources and provide services, related to the breeding business in animal husbandry; owners of non-breeding

animals are consumers of breeding (genetic) resources and customers of breeding services in animal husbandry.

To obtain legal protection and recognition of a certain breed of animal as a breeding achievement, a joint order of the Ministry of Agrarian Policy and Food of Ukraine and the Ukrainian Academy of Agrarian Sciences had to be issued [6].

In Ukraine, the Special Information System of the National Intellectual Property Authority (NIPA) has been created, and intellectual property centres are functioning, these are business entities that ensure the implementation of educational and scientific programs, as well as improving the qualifications of employees in the field of intellectual property; which could take on the functions of providing legal support in the exercise and protection of intellectual rights ensuring biological and food safety.

Currently, according to Article 6.2 of the Law of Ukraine No. 3687-XII “On Protection of Rights to Inventions and Utility Models” dated 15.12.1993, the object of the invention may be a breed of animals, but the legal protection of this law does not extend to such an object. According to Article 11 of the Law, state registration of breeding achievements is carried out by entering relevant data based on orders of the Ministry of Agrarian Policy and Food of Ukraine in the State Register of breeding achievements in animal husbandry. According to the data of which, as of the end of 2021, the following number was registered: in poultry farming, 5 breeding achievements;

in beekeeping – 2; in cattle breeding – 11; in pig breeding – 8; in horse breeding – 2 (the validity period of exclusive property rights for one foal is in 2021 – a new Ukrainian breed of riding horses); in fish farming – 3 [7]. For comparison, according to the World Intellectual Property Organization (WIPO) there were 26 cattle patents in the United States of America from 1997 to 2012 [8].

The Law, in contrast to Article 487 of the Civil Code of Ukraine, does not make provision for the possibility of issuing a patent for breeding achievements in animal husbandry and granting the corresponding rights. Owners of breeding (genetic) resources are entitled to receive certificates of breeding (genetic) resources, which are documentary evidence of the quality and breeding value of breeding (genetic) resources during their acquisition, sale, and trade (Articles 1 and 13 of the Law).

The only document containing information about the breed of the animal, the results of the genetic examination and the owner of the breeding animal is the Certificate of breeding (genetic) resources.

Evidently, the absence of a common “denominator” in the legal regulation of the issue of establishing a law enforcement document for a breed of animals plays a negative role. However, considering world practices, specifically, the main principles of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), it is necessary to discuss the possibility for the

inventor to ensure the protection of intellectual property rights in several ways. The factors affecting the possibility of choosing a method of protecting intellectual property rights are as follows: the level of ensuring the implementation of private property rights; the effectiveness of the judicial system in proceedings related to intellectual property; the ability of law enforcement agencies to investigate such cases; the possibility of the inventors themselves to take preventive measures. An analysis of the Unified Agrarian Policy of the EU, which defines the structure of breeding activities, shows that breeding activities in the European Union are carried out not by state bodies, but by licensed breeding farms, which are controlled by scientific research or educational institutions [9]. An exception is the legislation of Bulgaria and Romania, where innovation, distinctiveness, uniformity, and stability are among the criteria for the patentability of animal breeds. Such provisions are contained in the Romanian Patent Law No. 64/1991 of October 11, 1991, and the Law of the Republic of Bulgaria of September 19, 1996 “On the Protection of New Plant Varieties and Animal Breeds” [10].

The authors of this paper support the position of the Ukrainian scientific community on the need to implement Corrigendum to Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights in the procedural codes of Ukraine [11].

Conclusions

The legal regulation of intellectual property rights for breeding achievements in animal husbandry requires the coordination and adoption of a regulation that would allow effectively protecting intellectual property rights in this area, similar to the Law of Ukraine “On the Protection of Rights to Plant Varieties”, especially since the draft law on the legal protection of breeding achievements in animal husbandry has been in the Verkhovna Rada of

Ukraine for more than 20 years. Effective protection of the breeder’s intellectual property rights should be a decisive factor, along with the regulatory consolidation of the procedure for obtaining a law enforcement document, for the full-fledged “existence” of a breeding achievement. The principal function of protecting the rights of breeders should be implemented through the effective activities of the Supreme Court for intellectual property.

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Селекційне досягнення у тваринництві як об'єкт права інтелектуальної власності та міжнародний досвід його захисту

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Анотація

Права інтелектуальної власності передбачені у Загальній декларації прав людини. Патент на породу тварин є виключним правом винахідника на своє селекційне досягнення, він є юридичною монополією, що забезпечується державою, а патентний захист унеможлиблює комерційне використання без згоди його власника. Виклики сьогодення безпосередньо стосуються забезпечення продовольчої безпеки. Практичне застосування селекційних досягнень у тваринництві, зокрема, полягає у генетичному покращенні тварин з «економічного боку», що прямо впливає на рівень інвестицій та винагород для селекціонерів, а від так і зростає потреба у ефективному правовому захисті прав інтелектуальної власності. У зв'язку з цим, метою цієї статті є дослідження правового регулювання прав інтелектуальної власності на селекційне досягнення у тваринництві, пропозиції щодо його удосконалення через дослідження міжнародного досвіду. У ході дослідження використовувались філософські, загальнонаукові та спеціально-юридичні методи наукового пізнання, які було обрано з урахуванням мети та завдань дослідження. У статті на основі аналізу нормативно-правових актів, що регулюють порядок отримання правової охорони селекційного досягнення у тваринництві, досліджуються проблемні позиції та пропонуються способи усунення колізій у правовому регулюванні цих питань. Також було проаналізовано міжнародний досвід щодо оформлення правоохоронних документів для селекціонерів та можливості захисту своїх прав. Матеріали статті становлять практичну цінність для подальших вкладень, вдосконалень та виявлення нових питань в дослідженні у сфері селекційного досягнення в тваринництві

Ключові слова: об'єкт права інтелектуальної власності, селекційне досягнення, селекційне досягнення у тваринництві, захист права інтелектуальної власності
