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National strategy for the development and protection of intellectual property

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Abstract

In recent years, Ukraine has received not only new legislation, a new regulator, but also a new national intellectual property body. On the initiative of the Ministry of Economy of Ukraine, Resolution of the Cabinet of Ministers of Ukraine No. 1267-p dated 13.10.2020, to implement Item 7.1 of Section II "Final and Transitional Provisions" of the Law of Ukraine No. 703-IX "On Amendments to Certain Laws of Ukraine Regarding the Creation of a National Intellectual Property Body" dated 16.06.2020 determined that the State Enterprise "Ukrainian Institute of Intellectual Property" performs the functions of the National Intellectual Property Body. Given that the state structures considered six options for the formation of a new national body, the temporary designation of the Ukrainian Institute of Intellectual Property as the National Intellectual Property Body was, on the one hand, the optimal solution, and on the other hand, the system of intellectual property protection with amendments to some laws of Ukraine regarding the creation of a national intellectual property body, underwent substantial changes that could not affect the entire system of intellectual property protection in the country. Based on the relevance of the topic, the purpose of this paper was to figure out and analyse the state of Ukraine's performance of international obligations in the field of intellectual property, as well as the adoption of a national strategy to develop the specified area and find effective methods for its practical implementation. The leading methods for investigating this issue were as follows: functional approach (considers the management system of the enterprise in the form of a set of functions, i.e., actions united by a common content, properties, and nature of activity), the method of logical analysis (which is based on logical

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premises and conclusions), the method of synthesis (the content of which is to combine previously dissected parts of the subject into a single whole), the method of deduction (the method of transition from knowledge of general laws to its separate manifestation), etc. This paper determined that the National Strategy for the Development of Intellectual Property in Ukraine for 2020–2025 is not a panacea for current issues. It was also found out that the basis for the unity and integrated nature of national policy is the adoption of national strategies for the development of intellectual property. Furthermore, the state should implement a plan for the practical implementation of the strategy since practice confirms the ineffectiveness of the implementation of such documents after adoption. Therefore, it is necessary to organize the efforts of all branches of government as much as possible to focus on the performance and implementation of the introduced reform. An essential step in this area is the completion of judicial reform. This strategy should reflect the adaptation of the Institute of Intellectual Property to general global trends and successful European practices, contain the purpose and ways of its practical implementation. The successful adoption of the strategy determines the further development of judicial and legal reform in Ukraine, within the framework of which the Supreme Court on Intellectual Property Issues has already been established, but without the unity of legislation, its strategic coherence, it is impossible to practically implement the initiated reform, and, accordingly, perform international obligations. The materials of this paper are of practical value for further research on the development of judicial and legal reform in Ukraine

Keywords: intellectual property, legislation, reorganization, national body, system, structure

Introduction

According to the provisions of the Constitution of Ukraine, everyone is entitled to own, use, and dispose of their property, the results of their intellectual and creative activities. The state guarantees citizens freedom of literary, artistic, scientific, and technological creativity, protection of intellectual property, their copyright, moral, and material interests arising in connection with diverse types of intellectual activity. Every citizen is entitled to the results of their intellectual and creative activities; no one may use or distribute them without their consent, with exceptions established by law. These constitutional mandatory norms are designed not only to promote the development of intellectual property, but also to ensure the right of a person to the result of intellectual and creative activity – an object of intellectual property rights.

A review of the rating positions of Ukraine regarding the creation of objects of intellectual property rights shows the promising potential of Ukrainian inventors. According to the annual WIPO reports “World Intellectual Property Indicators”, according to the generalized indicator

of activity regarding applications for industrial property, Ukraine is in the group of leading countries (23rd place). Furthermore, according to the indicator “patents”, Ukraine ranks only the 33rd, and in the rating for industrial designs (16th place).

However, with the entry into force of the Law of Ukraine No. 703-IX “On Amendments to Certain Laws of Ukraine Regarding the Creation of a National Intellectual Property Authority” dated June 16, 2020, which defines the powers of the National Intellectual Property Authority (NIPA), the system of legal protection and development of intellectual property has undergone substantial changes, which should affect the scientific research on the creation of objects of intellectual property law.

Considering the importance of the problem, the issues of improving the protection of intellectual property, reforming legislation, have always been in the centre of attention of researchers. These include H. Androshchuk, Yu. Boshytskyi, M. Dubynskyi, M. Pushkar, O. Orliuk, O. Korotun, A. Kudin, A. Khridochkin, O. Chomakhashvili, and others. However, against the background of

recent changes in legislation, the issue of intellectual property protection requires further research.

The purpose of this paper was to analyse the current state of intellectual property protection, Ukrainian legislation, as well as issues of legal doctrine in the field of socio-economic growth, providing innovations and systems of intellectual property protection

Results and Discussion

Numerous discussions of practitioners, scientists, and legislators, who in recent years paid attention to the problematic issues of intellectual property protection in the country, found support in the Parliament, which culminated in the parliamentary hearings "Building an effective system of intellectual property protection in Ukraine", which took place on 16.12.2019. At the parliamentary hearings, the main issues were the adoption of the National Strategy for the Development of Intellectual Property in Ukraine for the period 2020-2025; changes in the state management of the intellectual property rights protection system, and the establishment of the NIPA; accelerating the updating of Ukrainian legislation according to the provisions of the Association Agreement between Ukraine and the EU, increasing the level of protection of intellectual property rights.

The state influence on the regulation of social relations in the researched area is exercised according to the norms of law, rights, and obligations. However, modern trends in legal regulation do not always consider the objective regularity of ensuring proper security and protection of the rights of those entitled to objects of intellectual property rights. These rights are related to separate legal regimes of objects of intellectual property law because the legislator does not always consider the practical component, which acts as a guarantor of intellectual property protection [1].

Adoption of the National Strategy for the Development of Intellectual Property in Ukraine has cre-

ated issues in this area of public relations, which is important for the country's economy. Over the past 30 years, there has been a decrease in patent activity and the quality of patentable offers in Ukraine. Ukrainian inventors do not see any prospects for implementing their ideas or do not have the means for patenting because the entire process from invention to patenting costs from 5 to 15 thousand US dollars. In the world, most patents belong to the 5th and 6th technological paradigms, in Ukraine – only to the 3rd and 4th. This situation is not accidental. The percentage of science funding in GDP in recent years is approximately 0.37-0.47%, which is 10 times less than, for instance, in Israel. Highly qualified industry and factory science was destroyed in entirety. While from the submission of foreign advisers, there are always conversations about the need to merge university and academic science, which will lead to the final destruction of academic science as well. The number of researchers has also decreased substantially over the past 30 years. New research equipment is not purchased [2].

Today, Ukraine is still on the list of countries that do not provide protection of intellectual property rights and are monitored by the Office of the US Trade Representative – the country is in the Priority Watch List group of countries. The main problematic issues include 1) unfair, non-transparent administration of the system of collective management organizations responsible for collecting and distributing royalties to copyright holders; 2) widespread use of unlicensed software by Ukrainian state institutions; 3) failure to implement effective means to combat large-scale copyright infringement on the Internet. Due to Ukraine's failure to provide adequate and effective protection of intellectual property rights, in December 2017 the USA announced a partial suspension of benefits for Ukraine (according to the General System of Preferences). In 2019, the United States resumed some temporarily suspended benefits, recognizing the concrete steps

taken to reform Ukrainian intellectual property protection regime. The presence of issues in the field of protection of intellectual property rights is also evidenced by Ukraine's low positions in global rankings: according to the indicator "Protection of intellectual property" in the rankings of the Global Competitiveness Index of 2019, the country ranked 118th among 141 countries; in the International Property Rights Index (IPRI-109) according to the sub-index "Protection of intellectual property rights" among 129 countries – 88th, including according to the indicator "Perception of IP protection" – 105th; according to the indicator "Patent protection" – 43rd; according to the indicator "Copyright piracy" – 93rd [2].

Having ratified the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, by Law No. 1678-VII dated 16.09.2014, Ukraine undertook to simplify the creation and commercial use of innovative products and products of creative activity on the territory of the Parties and achieving an appropriate and effective level of security and protection of intellectual property rights. According to the agreement, intellectual property rights include copyright, specifically the right to computer software and databases, as well as related rights, rights related to patents, namely patents for inventions in the field of biotechnology, trademarks, brand names, if they are protected in the form of an exclusive intellectual property right by the corresponding national legislation, industrial designs, layout (topography) of integrated circuits, geographical indications, namely indication of origin, indication of source of origin, plant varieties, protection of confidential information and protection against unfair competition.

Article 168 of the Agreement also prescribes that the parties may establish their unique regime of exhaustion of intellectual property rights, considering the provisions of the TRIPS

Agreement dated April 15, 1994, according to which the term "intellectual property" encompasses all categories of intellectual property.

The norms of the Agreement between Ukraine and the EU prescribe the introduction of progressive European legal standards and legislation in Ukraine, as well as the dissemination of knowledge about EU practices in legal regulation of intellectual property relations.

According to the Regulation on the Ministry of Economy of Ukraine, approved by Resolution of the Cabinet of Ministers of Ukraine No. 459 dated 20.08.2014 (as amended by Resolution No. 124 dated 17.02.2021), the Ministry of Economy is the main body in the system of central executive bodies that ensures national policy in the field of intellectual property, coordinates activities and controls National Intellectual Property Authority's compliance with legislation in the field of intellectual property.

According to the Law of Ukraine No. 703-IX "On Amendments to Certain Laws of Ukraine Regarding the Creation of a National Intellectual Property Body" dated June 16, 2020, according to which NIPA is a state organization that is part of the state system of legal protection of intellectual property, defined nationally by the Cabinet of Ministers of Ukraine as exercising powers in the field of intellectual property, defined by this Law, other laws on intellectual property, acts of the central executive body that ensures the development and implementation of national policy on intellectual property, and the statute, and is entitled to represent Ukraine in international and regional organizations.

NIPA operates as follows: the Appellate Chamber for consideration of objections against NIPA decisions regarding the acquisition of rights to intellectual property objects, applications for recognition of rights to intellectual property objects as invalid in whole or in part, applications for recognition of a trademark as well-known in

Ukraine and consideration of other issues that fall into its competence according to the legislation; the Attestation Commission is a NIPA collegial body, the main purpose of which is the attestation of individuals, who have expressed their intention to acquire the right to work as an intellectual property representative (patent attorney); the Appeals Commission is a NIPA collegial body, the main purpose of which is to consider complaints of candidates for intellectual property representatives (patent attorneys) against the decisions of the certification commission and review complaints about the actions of intellectual property representatives (patent attorneys).

In the matter of NIPA activity, one should agree with the opinion that the “national” status should make provision for the protection of the rights of intellectual property subjects in relation to all objects of intellectual property law, including the protection of intellectual property rights in relation to breeding achievements in plant breeding (plant varieties) and animal husbandry (animal breed) [3].

According to the norms of the above Law, the SE “Ukrainian Institute of Intellectual Property” (Ukrpatent) is an institutional component of the national system of legal protection of intellectual property and exercises the following powers: accepting applications, conducting their examination, making decisions regarding them (industrial property); reception and consideration of applications for state registration of author’s rights to works of science, literature, and art, as well as for registration of contracts relating to authors’ rights to works, implementation of their registration; implementation of state registration of industrial designs and issuance of a certificate; state registration of geographical indications; implementation of state registration of inventions and utility models, issuance of patents for inventions and utility models; implementation of state registration of trademarks, issuance of a trademark

certificate; implementation of state registration of layouts, issuance of a layout certificate; issuance of a certificate of copyright registration for a work; recognition of industrial design rights as invalid in whole or in part; invalidation of rights to inventions and utility models; publication of official information about industrial designs, trademarks, layouts, geographical indications, inventions, and utility models in the bulletin; maintenance of state registers; training, certification, and registration of intellectual property representatives (patent attorneys); maintaining the State Register of representatives in Intellectual property matters (patent attorneys), etc.

Ukrpatent has the following bodies: Appeals Chamber for consideration of objections against decisions regarding the acquisition of rights to intellectual property objects, applications to declare rights to intellectual property objects invalid in whole or in part, applications to recognize a trademark as well-known in Ukraine; Commission on the approval of questions about adding a designation containing the official name of the state “Ukraine” to the mark for goods and services; the Attestation Commission for the attestation of individuals who expressed the intention to acquire the right to work as an intellectual property representative (patent attorney) and for considering complaints of candidates for intellectual property representatives (patent attorneys) on the decisions of the Attestation Commission and considering complaints against the actions of representatives in intellectual property cases (patent attorneys).

The above indicates that presently the functions of ensuring the protection of intellectual property in Ukraine are entrusted to the National Intellectual Property Authority and the Ukrainian Institute of Intellectual Property.

Notably, to secure and protect copyright and related rights in Ukraine, the State Organization “Ukrainian Agency for Copyright and Related Rights” (UACRR), which was formed to manage

the property rights of copyright subjects on a collective basis, operates in Ukraine and (or) related rights and other right holders, namely such categories of property rights as the use of copyright objects and (or) related rights through public performance, recording, public notification, public demonstration, public display, retransmission, reproduction of works, reprographic reproduction, industrial reproduction of works of fine art, as well as the artist's resale right, support to the specified subjects and other right holders regarding the transfer of rights, for the use of works of science, literature, and art on an individual basis, representation of the legitimate interests of subjects of copyright and (or) related rights and other rights holders in state and public bodies and organizations, performance of certain functions on behalf of the authorized management body.

Apart from the State Organization UACRR, there is also a public organization "Ukrainian Agency for Copyright and Related Rights" – an organization for collective management of the rights of authors of musical, literary, dramatic, and other works of art and science. PO "UACRR" manages the property rights of Ukrainian authors, as well as represents the interests of foreign copyright holders on the territory of Ukraine based on agreements on mutual representation with foreign copyright organizations.

Notably, there are numerous disputes between these organizations regarding the protection of copyright and related rights, which leads to numerous lawsuits between these organizations,

which were considered and are being considered both in the Economic Court of Kyiv and in the Northern Economic Court of Appeal. For instance, Case No. 910/18496/19 dated 14.09.2021, which was considered in the Northern Economic Court of Appeal. Therefore, subjects of copyright and related rights should take a balanced approach to choosing an organization that manages their rights.

Conclusions

Along with the creation of a two-level structure in Ukraine to ensure the protection of intellectual property, the state has issues not only with the creation of new objects of intellectual property rights, but also with the protection of subjective rights of copyright holders and their legal users, the state has not yet created a favourable environment for the commercialization of objects of intellectual property rights, legislative solutions to problematic issues of profit distribution among all participants involved in the commercialization of intellectual property.

The experience of the leading countries of the world, namely, the United States, China, North Korea, Japan, and other countries, shows that it is intellectual property that has become the main driving force of economic development and, as a result, an increase in the standard of living of the population. Solving these and other problematic issues in the field of intellectual property will contribute to the socio-economic growth of the country, ensuring the effectiveness of innovation processes and innovations in Ukraine.

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Національна стратегія розвитку та охорони сфери інтелектуальної власності

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Анотація

За останні роки Україна отримала не тільки нове законодавство, нового регулятора, але й новий Національний орган з інтелектуальної власності. З ініціативи Міністерства економіки України, Кабінет Міністрів України 13.10.2020 р. № 1267-р, на виконання підпункту 1 пункту 7 розділу II «Прикінцеві та перехідні положення» Закону України від 16.06.2020 р. № 703-IX «Про внесення змін до деяких законів України щодо створення національного органу інтелектуальної власності» визначив, що державне підприємство «Український інститут інтелектуальної власності» виконує функції Національного органу інтелектуальної власності. Враховуючи, що державними структурами розглядалося шість варіантів утворення нового національного органу, визначення на тимчасовий період ДП «Український інститут інтелектуальної власності» в ролі Національного органу з інтелектуальної власності, з однієї сторони було оптимальним рішенням, а з іншої, система охорони інтелектуальної власності із внесенням змін до деяких законів України щодо створення національного органу інтелектуальної власності, зазнала суттєвих змін, що не могло позначитися на всій системі охорони інтелектуальної власності в державі. Виходячи з актуальності тематики, метою дослідження являється визначення та аналіз стану виконання Україною міжнародних зобов'язань у сфері інтелектуальної власності, а також процесу прийняття Національної стратегії розвитку визначеної сфери та пошуку ефективних методів її практичної реалізації. Провідними способами для дослідження цієї проблеми є наступні методи: функціональний підхід (розглядає управлінську систему підприємства у вигляді набору функцій, тобто дій, об'єднаних спільним змістом, властивостями та характером діяльності), метод логічного аналізу (який базується на логічних посилках та висновках), метод синтезу (змістом якого є об'єднання раніше розчленованих частин предмета в єдине ціле), метод дедукції (метод переходу від знання загальних закономірностей до окремого його прояву) та ін. У статті визначено, що Національна стратегія розвитку сфери інтелектуальної власності в Україні на 2020-2025 роки не є панацеєю від нинішніх проблем. Також з'ясовано, що основою для єдності і комплексного характеру державної політики необхідним є прийняття Національної стратегії розвитку сфери інтелектуальної власності. Окрім того, держава повинна впровадити план практичної реалізації стратегії, адже практика підтверджує неефективність виконання таких документів після прийняття. Тому потрібно максимально організувати зусилля органів усіх гілок влади для зосередження уваги на виконанні та реалізації запровадженої реформи. Важливим кроком у цьому напрямі є завершення судової реформи. Вказана Стратегія має стати відображенням адаптації інституту інтелектуальної власності до загальних світових тенденцій та успішних європейських практик, містити мету та шляхи її практичної реалізації. Від успішного прийняття Стратегії залежить подальший розвиток судово-правової реформи в Україні, в рамках якої уже створено Вищий суд з питань інтелектуальної власності, однак без єдності законодавства, стратегічної його узгодженості, не можлива практична реалізація започаткованої реформи, а відповідно і виконання міжнародних зобов'язань. Матеріали статті становлять практичну цінність для подальших досліджень розвитку судово-правової реформи в Україні

Ключові слова: інтелектуальна власність, законодавство, реорганізація, національний орган, система, структура