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Role of intellectual property in the development of the state's innovation potential

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Abstract

The war poses serious challenges to the economy, national security, and development of the country as a whole, and innovation can be an important tool in overcoming these challenges. The research aims to study the impact of intellectual property on stimulating and promoting innovative development in the context of technological progress. The methods of scientific cognition used include analysis, synthesis, deduction, comparison, generalisation, and systematisation; a systematic approach was applied to create a comprehensive methodology for analysing the situation in the intellectual property market. The study investigates how intellectual property can stimulate scientific research, promote the development of new technologies, increase competitiveness within the state and contribute to economic growth. The study analyses the works of Ukrainian scientists that have a positive impact on the development of Ukraine's innovation potential. The author presents an opinion on the need to develop and improve the protection of intellectual property rights, as this will facilitate the discovery of new technologies and the involvement of scientists in their development. The author discusses the issue of establishing the High Court of Intellectual Property and identifies the advantages and disadvantages that may arise with the introduction of such a body. The author

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substantiates the position on encouraging and conducting outreach to the public to involve scientists and specialists in the discovery and development of new technologies, and exchange of experience, and also emphasises the need for open educational and scientific events that will contribute to the development of Ukraine's innovation potential. The author considers various methods of encouraging the population to discover new technologies and work in this direction, such as legal mechanisms that protect intellectual property rights holders from unfair competition, namely administrative and criminal liability. The practical value of the results obtained is that they reveal in detail the problematic issues of the innovation potential of the state, as well as identify areas for improvement and provide recommendations for the productive development of the digital state

Keywords: digital age; technology; development of legal regulation; protection of rights holders; innovations; rights protection

Introduction

The role of intellectual property in the development of technological progress is an important and relevant topic in a rapidly moving world, where innovation plays a key role in improving the quality of life and stimulating economic development. Intellectual property is a key factor that helps to stimulate the innovation process and development in the field of technology. Ensuring the effective protection and use of intellectual property can contribute to the creation of new technologies, products and services that will address the challenges posed by martial law. In addition, innovative development can support various sectors of the economy and stimulate economic growth in a resource-constrained environment. It is especially important to engage scientists, researchers, creators, and entrepreneurs in cooperation to develop new innovative solutions. This may include creating new technologies to improve the effectiveness of defence forces, developing new medical technologies to help the wounded, developing innovative methods of resource management, etc. A strong innovation base can help Ukraine preserve its capabilities and resources in times of war, build a sustainable economy, and maintain national

security. Intellectual property covers the legal protection of intellectual works and innovative products, including literary, scientific, musical, artistic, inventions, designs, trademarks, etc. This concept includes rights granted to authors, inventors and innovators that allow them to control the use and commercialisation of their creative intellectual achievements. According to the World Intellectual Property Organisation (n.d.), intellectual property includes copyrights, patents, industrial designs, trademarks, geographical indications, and other forms of protection. These rights provide inventors with legal protection for their creative intellectual products, which help to stimulate the innovation process and technological development.

E. Kokhanovska and A. Kodynets (2021) note that the right to information and other non-property information rights of individuals are not only developing rapidly but also, since the late 2000s, have become extremely relevant in the context of problems associated with the expansion of information technology and artificial intelligence. The authors also focus on the inability to ensure effective protection of intellectual property in the current information environment solely through

the strengthening of liability measures and determine that a possible paradigm for the model of legalisation of the use of intellectual property objects in information networks and systems may be the model of free paid use, which is already successfully used by various media organisations, radio and television companies and other users.

A. Kodynets (2018) examined the aspects of intellectual property rights protection, in particular by the Ukrainian legislative and judicial authorities, intending to establish a specialised institution for the consideration and resolution of intellectual property disputes. The author proposed to establish the High Court of Intellectual Property, which should be a specialised court exclusively dedicated to intellectual property cases. S. Kolos (2019) analyses the current regulatory legal acts of Ukraine that define the procedures and mechanisms for the protection of intellectual property rights. Particular attention is paid to the peculiarities of protecting such rights in the context of updating the judicial system.

There are cases of infringement of intellectual property rights, and they require certain penalties from the legislator, which were analysed by V. Maryniv and M. Demura (2021). The article indicates when exactly the owner acquires the right to protect intellectual property and also indicates in which area of law this possibility arises. The author identifies specific guarantees for ensuring the rights of a victim of a criminal offence related to the infringement of intellectual property rights. H. Androshchuk (2021) examined the process of forming the theoretical, methodological, and methodological foundations for the effective protection of the rights of intellectual property owners and paid special attention to improving the efficiency of experts from intellectual property offices, law enforcement agencies and the development of digital search tools and the use of

artificial intelligence to support the institution of individualisation means.

Besides the issue of guarantees for the protection of intellectual property rights, it is necessary to focus on what steps the state is taking to improve the development of intellectual property rights and how to encourage citizens to create new intellectual property rights. N.M. Parkhomenko *et al.* (2021) examined not only the activities of the state's scientific institutions, but also the educational process of higher education institutions, and pointed out that this is receiving considerable attention, by organisations such as European Union and the World Intellectual Property Organisation. The authors also examine the regulatory requirements and scientific approaches to the formation of intellectual property policy for higher education and research institutions in Ukraine, to propose measures aimed at improving the effectiveness of such policy.

O. Zaikivskiy and O. Onistrat (2021) studied the impact of intellectual property on the system of threats to the national security and defence capability of Ukraine and noted that intellectual property is of great importance for the national security and defence capability of the country and requires a systematic approach. The authors highlight the need to define the intellectual property protection system as a component of the national security and defence capability of Ukraine. The emphasis is placed on the introduction of effective mechanisms for the protection of intellectual property, which is an important task for maintaining national security and protecting important innovative developments and technologies.

Despite the existence of numerous studies in this area, it is still important to analyse the impact of intellectual property on supporting and promoting innovative development within the framework of technological progress. It is also worth analysing

the role of legal regulation in ensuring the effective protection of intellectual property and supporting the innovation environment. Additional study is needed to identify factors that may hinder or facilitate the development of innovation potential within the framework of technological progress.

The research aims to review the existing legislation of Ukraine and study its existing gaps, as well as to consider relevant works of Ukrainian and foreign scholars who study the impact of intellectual property on stimulating innovation and technological development and offer an in-depth analysis of this topic.

Materials and Methods

An analysis method is used in the study to reveal and investigate the relationship between intellectual property and innovative development of technological progress. By analysing data, statistical indicators, scientific research and Ukrainian legislation, the impact of intellectual property on stimulating and promoting technological progress is considered. This method helped to reveal positive and negative aspects, identify trends, and analyse the impact on the economy and society, which ultimately allowed the author to formulate conclusions and recommendations on the role of intellectual property in the innovative development of technological progress. The synthesis method was used to combine various aspects and conclusions from different sources and studies. The paper analyses different views on the relationship between intellectual property and innovative development and considers various aspects of the impact of intellectual property on technological progress. After that, the synthesis method was used to combine these aspects into a single concept, to put forward our theses and recommendations on the role of intellectual property in the innovative development of technological

progress. Synthesis helped to understand how the different elements of the study interact with each other and contribute to the conclusions aimed at supporting innovative development. The deduction was used to formulate general statements and conclusions based on the analysis of specific facts and data. It allowed for the use of information from different sources and studies to identify general patterns and principles that emerge from this specific information.

The comparison method is used to identify similarities and differences between different approaches and practices related to intellectual property. This method is used to compare different approaches to the use of intellectual property in different industries, areas, or countries. This comparative approach was employed to highlight the advantages and limitations of different approaches, as well as to identify the most effective strategies for stimulating innovation development in the context of intellectual property. The method of generalisation was used to draw general conclusions based on the analysis of specific data, facts, or studies. It helped to summarise the results of research on the impact of intellectual property on innovative technology development, highlighting the main trends or patterns. The method allowed us to draw general conclusions about which types of intellectual property are most effective in stimulating innovation, as well as which strategies for protecting it help to achieve better results. The method of generalisation helped to highlight the main views and support the conclusions with general concepts and trends, which contributed to a deeper understanding of the role of intellectual property in the development of the innovative potential of technological progress. The method of systematisation was used in the article to organise and classify various information, data, and concepts to identify

the main patterns and relationships. It is used to group various aspects of the impact of intellectual property on innovation development according to certain criteria. This method allowed us to show a structured picture of the relationships between different aspects of intellectual property and their impact on the development of the innovative potential of technological progress, which contributed to a clearer understanding of this role.

The study employs such statistical materials as the annual Global Innovation Index (Dutta *et al.*, 2022), which analyses the trend in the development of Ukraine's technological potential until 2019 and its gradual lagging behind its closest competitors due to the factors of the coronavirus epidemic and the beginning of Russia's full-scale invasion of Ukraine. The article also uses data from the Ukrainian Institute of Intellectual Property (2022), which shows an increase in the number of registered industrial property objects compared to 2021, which confirms the sustainable development of intellectual property even under difficult martial law conditions. Scientific articles by Ukrainian and foreign scientists who make a significant contribution to the development of intellectual property and the growth of Ukraine's technological potential are used.

Results and Discussion

The importance of intellectual property in today's world is crucial and is recognised as one of the key factors in the development of economy, technology, science, and culture. Intellectual property covers various ideas, inventions, technologies, works of art, designs and much more that are the result of people's intellectual activity. Regarding the main aspects of the importance of intellectual property in the modern world, the main ones are as follows: first, it stimulates innovation and scientific research, as intellectual property protection

provides creators and inventors with legal protection and remuneration for their work, which stimulates their motivation to develop new ideas, technologies, and products. Secondly, intellectual property contributes to economic development, as new technologies and innovative products help to increase the productivity and competitiveness of enterprises and create new jobs. Thirdly, it is attracting investment, both from Ukrainian businesses and from abroad. Protected intellectual property becomes an attractive asset for investors, which increases the country's investment potential. It is also the protection of cultural heritage, as intellectual property copyright protection preserves and protects the cultural heritage of the nation, including language, literature, music, traditions, and customs. It is also worth talking about ensuring the quality of products and services. It is intellectual property that helps to set quality standards and conformity of products and services, which contributes to consumer protection. This is followed by a healthy competitiveness of the country in the international market, so that the export of intellectual property, such as technology, knowledge, and brands, helps to increase the country's international visibility. In general, intellectual property plays a crucial role in creating an innovative, creative, and sustainable society that contributes to the development of the national economy and ensures the country's prosperity. These are the theses of the papers that influence the development of intellectual property in the country, as well as encourage entrepreneurs to create new products and thus develop technologies through fair competition and the desire to contribute to the development of technological progress.

China plays an important role in the development of intellectual property, which is explored by H. Androshchuk (2019) in a study, where, based

on the data of the World Intellectual Property Organisation (2018), it is indicated that the growth in the number of patent applications continues for the eighth consecutive year and amounted to 5.8. The number of trademarks filed for registration worldwide totalled 12.39 million, and industrial designs – 1.24 million. For each of these types of intellectual property rights, the largest volume of applications was received in China. Many innovators and creators in China, as well as foreign

entities, are seeking to protect and promote their work in one of the world's fastest-growing economies. Due to the high level of activity in China, the number of applications for patents, trademarks and industrial designs has reached new record levels. It is worth noting that the growth in the number of patent applications continues to grow steadily, as can be seen from the World Intellectual Property Organisation (2022), which is summarised in the following table.

Table 1. Number of patent applications filed to IP5

Country/year	2019	2020	2021
China (CNIPA)	1 400 661	1 497 159	1 585 663
USA (USPTO)	621453	597172	591473
Japan (JPO)	307969	288472	289200
South Korea (KIPO)	218975	226759	237998
Europe (EPO)	181479	180346	188778

Source: compiled by the author based on World Intellectual Property Organization (2022)

To explain the presented table, it is worth noting that the IP5 is the name of the forum of the five largest intellectual property offices in the world, which was established to improve the efficiency of the patent examination process worldwide. Together, the IP5 offices process about 80% of the world's patent applications and 95% of all work performed under the Patent Cooperation Treaty. The five patent offices are the United States Patent and Trademark Office (USPTO), the European Patent Office (EPO), the Japan Patent Office (JPO), the Korea Intellectual Property Office (KIPO) and the China National Intellectual Property Administration (CNIPA, formerly SIPO). Analysing the WIPO report (2022), it is possible to state that in 2021, inventors from around the world filed 3.4 million patent applications, which is an increase of 3.6% compared to 2020. Asian offices received 67.6% of the total number of patent applications

worldwide. China, the Republic of Korea, and India saw strong growth in national patent filings, which contributed to the increase in global patent volume and raised Asia's share of this indicator to over 2/3. The PRC became the leader in patent filings, with 1.59 million applications. This number of patents is similar to the total number of applications filed by the 12 offices ranked second to thirteenth in the ranking. Other leaders in patent filings include the United States, Japan, the Republic of Korea, and the European Patent Office, which together accounted for 85.1% of the total number of applications. This information demonstrates the significant contribution of Asia, and China in particular, to global innovation and patent activity. It also points to the importance of intellectual property and patents in the modern world, where countries are actively competing for leadership in technological innovation. In 2017,

amidst a significant increase in the number of applications for registration of patents, trademarks, industrial designs, and other intellectual property objects that play a central role in the global economy, the global demand for intellectual property rights protection instruments reached a new record level and continues to grow today. The paper provides a detailed analysis of filings for intellectual property rights and indicates that from 2009 to the early 2020s, the number of applications for such rights has been steadily increasing by more than 5% annually worldwide, which in turn means that our world is steadily moving towards the development of technology, and research by scientists only confirms the fact of growing innovation and encourages other innovators to develop and strive for discoveries. Based on the study by H. Androshchuk (2019), it can be understood that China is one of the countries that is the driving force behind the development of new inventions, i.e., it is one of the world's trendsetters in the field of technology. L. Fang *et al.* (2016) aimed to examine the impact of intellectual property on innovation and technological development in China. The researchers focused on the role of intellectual property as a stimulating factor for the development of new ideas, technologies, and products, and also found out how intellectual property rights can affect the activities of enterprises, innovative start-ups, and industries. The study analysed data on the number of patent, copyright and other intellectual property applications filed in China over some time. The researchers also assessed the level of innovation of Chinese companies and the country's innovative achievements in various industries. The results of the study showed a positive impact of intellectual property on innovation activity in China. In particular, companies and organisations with a significant number of patents and other forms of

intellectual property were more creative and actively developed new products and technologies. Thus, intellectual property has stimulated innovation and contributed to China's technological development. The study by L. Fang *et al.* (2016) is of great importance for understanding the role of intellectual property in economic development and promoting innovation in the country. Its results can be used to formulate policies and strategies to support the innovation environment and promote the protection of intellectual property in other countries, including Ukraine.

It is worth noting that on 1 December 2022, the Law of Ukraine "On Amendments to the Code of Ukraine on Administrative Offences and the Criminal Code of Ukraine on Liability for Copyright Infringement and (or) Related Rights" (2022) was adopted. The amendments are aimed at regulating infringement of copyright and related rights. This Law is important and related to other legislation, in particular, the Law of Ukraine "On Copyright and Related Rights" (2022). It provides for significant changes in the provisions relating to intellectual property and liability for its infringement, and considers international standards, in particular the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (2014). Under the provisions of this Law, fines for infringement of intellectual property rights under Article 52-2 of the Code of Ukraine on Administrative Offences (1984) have been significantly increased. Now, this type of offence is punishable by a fine in the amount of fifty to three hundred tax-free minimum income, as well as confiscation of illegally manufactured products. In addition, the penalties for infringement of copyright and related rights under Article 176 of the Criminal Code of Ukraine (2001) were increased. Such acts are now punishable by a fine of

three hundred to one thousand tax-free minimum income, the possibility of correctional labour for up to two years, or imprisonment for the same period. The law will also introduce significant changes to the Criminal Code of Ukraine regarding infringement of copyright and related rights. A new article will be added – 176-1 “Financing of infringement of copyright and related rights”, Article 216 “Illegal manufacture, counterfeiting, use or sale of illegally manufactured, obtained or counterfeit control marks” will be deleted, and the criminalisation of this type of offence will be expanded within Article 176 of the Criminal Code of Ukraine (2001). Analysing this law, it can be concluded that the main changes include:

- ✓ cancellation of the provisions on administrative and criminal liability relating to the marking of copies of audiovisual works, phonograms, videograms, computer programs and databases with control marks;
- ✓ strengthening administrative and criminal liability for infringement of copyright and related rights;
- ✓ introducing articles to the Criminal Code criminalising new forms of copyright and related rights infringement.

The drafters of the Law argue that it is necessary to adopt it since, first of all, the system of marking copies of audiovisual works, phonograms, videotapes, computer programs and databases with control marks has lost its relevance today. Secondly, the effectiveness of sanctions for copyright and related rights infringement needs to be strengthened, which will help to reduce the number of relevant infringements due to stricter liability. As for the legislator’s justification for the need to strengthen sanctions for copyright and related rights infringement, it is important to note that although there is an intention to improve the system of protection of these rights in Ukraine,

the effectiveness of this approach remains questionable. In its conclusion to the draft law, the Main Scientific and Expert Department cites some questionable statistics. According to the report of the courts of first instance for 2020, only ten cases of administrative offences under Article 51-2 of the Code of Ukraine on Administrative Offences were registered in Ukraine. Of these cases, only seven were considered, four resulted in administrative penalties, and three cases were closed (Conclusion of the Main Scientific and Expert Administration..., 2021). The number of copyright infringements is much higher, but statistics show that very few offenders are brought to justice. Instead of improving the methods of detecting and preventing infringement, the legislator chooses to increase criminal liability.

Ukraine is committed to joining the EU, and therefore, one of the obligations assumed by our country is the integration of national legislation into the standards of the European Union under the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (2014), and regulatory changes in the field of intellectual property are no exception and are also part of this process. Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Strengthening the Protection of Intellectual Property Rights” (2023), which took effect on 15.04.2023, regulates certain aspects relating to Directive 2004/48/EC of the European Parliament and the Council on the Enforcement of Intellectual Property Rights (2004). This Law also amends several other legislative acts of Ukraine, namely: The Commercial Procedure Code of Ukraine, the Civil Code of Ukraine, the Civil Procedure Code of Ukraine, the Laws of Ukraine “On Copyright and Related Rights”, “On Effective Management of Property Rights of Right Holders in the Field of Copyright and (or) Related

Rights”, “On Protection of Rights to Industrial Designs”, “On Protection of Rights to Trademarks and Service Marks”, “On Protection of Rights to Inventions and Utility Models”, “On Protection of Rights to Semiconductor Product Layouts”, “On Legal Protection of Geographical Indications” (Law of Ukraine No. 2974-IX..., 2023).

After analysing the amendments to the above legislation, the following changes are noted:

- ✓ seizure of goods manufactured or introduced into civil circulation in violation of intellectual property rights, as well as materials and tools used primarily for the manufacture of such goods, is now carried out at the expense of the person who infringed on these rights;

- ✓ the law provides for the possibility of using a one-time financial settlement as a means of protecting intellectual property rights in cases where the infringement of this right occurred unintentionally and without negligence, and the use of other remedies is disproportionate to the damage already caused;

- ✓ the law provides for the possibility of additional disclosure of infringement of intellectual property rights in the media or informing through other methods established by the court of the fact of infringement of intellectual property rights and the content of the court decision regarding this infringement at the expense of the person who infringed;

- ✓ the procedural legislation has been expanded with articles that more specifically define the procedure for obtaining evidence, such as information on the origin and distribution network of goods or services that may infringe intellectual property rights or are sufficient grounds to believe that such goods or services infringe intellectual property rights.

It should be noted that the constant change of legislation in the field of intellectual property

affects the need to reform the state bodies responsible for the implementation of state policy in this area. In Ukraine, the responsible body in the field of intellectual property is the National Intellectual Property Authority, which after 28 October 2022 will perform its functions through the state organisation “Ukrainian National Office of Intellectual Property and Innovations”. The new law also amended the regulations governing the work of this body. Thus, the amendments not only brought Ukrainian IP legislation closer to EU standards but also significantly strengthened measures to protect the rights of IP owners.

M. del C. Gutierrez Pla and L. Burtchaell (2021) concluded that intellectual property protection is crucial for fostering innovation, as a company that owns intellectual property rights will have a higher competitive advantage and legal protection against counterfeiting. Such legal protection is critical, in particular, for companies wishing to export to new markets. In addition, companies with IP rights can license or sell their IP rights, thus reducing operational risks and facilitating knowledge sharing in open innovation scenarios. This view reflects the importance and benefits of licensing or selling intellectual property rights for companies. Indeed, companies can use this approach as a strategic tool to reduce risks and facilitate knowledge sharing in innovation processes. Licensing allows companies to allow other businesses to use their technology or intellectual products for a fee. This can be beneficial for both parties: the licensee gains access to new technologies without the need for large research and development expenditures, and the licensor receives income from licence fees. The sale of intellectual property rights can also be beneficial, especially if a company decides to cease a certain type of activity or redirect its resources to other areas. It can bring financial benefits and allow the

company to focus on its core business. This approach also facilitates the exchange of knowledge and innovative ideas, as licensees or buyers have the opportunity to explore and use new technologies or developments. Hence, licensing or selling intellectual property rights can indeed be an important tool for companies to reduce risk, secure finance and facilitate knowledge sharing in innovative scenarios.

Among the existing shortcomings in the field of intellectual property, it is worth noting the conceptual problems of protecting intellectual property rights in the scientific and technical activities of teachers in various educational institutions, which were very well studied by M. Savvitskyi and H. Evseeva (2019). The authors note that due to the rapid development of information technology, information on the Internet is disseminated instantly. Information protected by copyright and/or related rights is often disseminated in this way. However, social relations related to the dissemination of information on the Ukrainian Internet segment are not legally defined, and there is no mechanism for the restoration of infringed rights. An important step towards improving the intellectual property rights of scientific and technical activities of educators is the provision that higher education institutions have the right to dispose of the funds they earn for scientific, technical, and other economic activities directly through bank accounts and without limiting their distribution by article. It is also urgent to simplify the mechanism for establishing business entities by state higher education institutions to use intellectual property rights. Agreeing with the authors' views, it is possible to add that this is important for the future education and economy of Ukraine. Education in the field of intellectual property should be close to innovations that can improve the Ukrainian economy. The rules

governing intellectual property rights should be up-to-date and meet modern standards for a developed economy. The state should also invest in leading universities, especially those engaged in research, to maintain their potential. Overall, this will promote innovation and growth in Ukraine's economy.

Analysing the problems and prospects of intellectual property rights protection, it is worth noting the material of E. Kokhanovska and A. Kodynets (2021). The opinion expressed by the authors in this article has its logic and considers important aspects of intellectual property in the context of modern information technology and the challenges associated with the expansion of artificial intelligence. According to scholars, the rights to information and other non-property information rights are important and relevant, especially in the era of rapid technological development. It is worth agreeing with this, as the availability of information is growing, and, accordingly, the need to regulate its distribution and use. As the study and development of information technology and artificial intelligence deepens, it becomes important to ensure the protection of intellectual property. It can be stated that the widespread distribution of digital content and the ease of copying may lead to copyright infringement. As for the free-to-use model, this concept can be effective, especially if it is complemented by proper organisation and control. However, this model can also have its limitations and requires a balanced approach to ensure both income for authors and access to information for the general public. In general, it is worthwhile to agree with the authors and note that there is a need to improve the protection of intellectual property in the information technology era, but there is also a need for a balanced approach to this issue, considering various interests and parties.

A study by A. Kodynets (2018) is of no less importance for the protection of intellectual property rights. The author's opinion on the establishment of a specialised court for intellectual property is reasonable, as it may have several positive aspects. First of all, intellectual property is becoming increasingly important in the modern world, especially in the context of technological development and globalisation. A specialised court may be more competent in dealing with complex intellectual property cases, as judges will have specialised expertise in this area. Such a court may contribute to more consistent and predictable justice in intellectual property matters. This may reduce the risk of inconsistent decisions in similar cases and contribute to the development of stable legal practice. In addition, a specialised court may ensure more efficient consideration of intellectual property cases due to the judge's familiarity with the specific aspects of this area. However, it is also important to consider possible disadvantages. Establishing a separate court could lead to increased costs for the judiciary and bureaucratic workload. There is also a risk that it may create a certain isolated judiciary that will not always be connected to general legal practice. In general, the creation of a High Court of Intellectual Property has its advantages and disadvantages, and before its implementation, all aspects should be carefully weighed and the practice of similar courts in other countries should be considered.

An important study on legal support for the protection and enforcement of intellectual property rights in Ukraine was written by K. Dobrovolska (2021). The author concludes that the list of violations of intellectual property rights should be supplemented. While the traditional violations included plagiarism, piracy, importation (exportation) of counterfeit copies of works, programmes, phonograms, copies of works, etc. into

the customs territory, the creation of new intellectual property objects whose legal status is not protected will result in new offences. The author's opinion points to the importance of balancing intellectual property in legislation. The current legislation in Ukraine focuses mainly on the rules and obligations related to intellectual property rights but does not pay sufficient attention to the processes and procedures for their implementation and protection. Ensuring not only substantive rights but also an effective mechanism for their enforcement and conflict resolution is critical to creating a favourable environment for innovation and development. Therefore, consideration should be given to improving the procedural aspects of the legislation to make it more efficient and accessible to citizens and businesses. This could include improving the system of adjudicating IP cases, simplifying the procedures for registering rights, and reducing bureaucratic barriers. Such an approach would facilitate more effective protection of intellectual property rights and promote innovation in Ukraine. The article also examines the correlation between the concepts of "protection" and "enforcement" of rights. Having analysed the author's materials, it is worth noting that legal protection is the first step in establishing rules with laws. It determines which areas of society are subject to the rules of law. Legal protection is a mechanism that ensures the restoration of violated rights if they have been violated. It provides tools to restore broken legal relations.

Based on a detailed analysis of the article by S. Kolos (2019) on the current regulatory legal acts of Ukraine defining the procedures and mechanisms for the protection of intellectual property rights, it is possible to agree that the judicial process in the field of intellectual property can be long and complex due to the lack of uniform judicial approaches and the length of time

for consideration of cases. This may harm the level of protection of intellectual property rights holders. The importance of special legislation detailing the methods of protection of rights to various intellectual property objects, considering their specifics, is also worthy of attention. Agreeing with the scholar's opinion, it should be noted that this court can ensure greater efficiency of judicial protection of intellectual property rights by speeding up the consideration of cases, unifying practice and ensuring higher quality of decisions. It is worth supporting the views of S. Kolos and noting that they coincide with the position of A. Kodynets (2018), so the idea of creating a High Specialised Court for Intellectual Property deserves attention from the state.

Regarding innovations, it should be noted that this term is an integral part of the concept of innovation activity, which is revealed in the works of Ukrainian scientists, for example, P. Tsybulov (2018), who considers innovation activity as maximising the socio-economic effect through the use of the results of intellectual labour, the so-called intellectual capital, an important component of which is intellectual property. Agreeing with the opinion of P. Tsybulov, it should be noted that his position emphasises that intellectual property is an important tool in maximising positive socio-economic results from innovation, and also contributes to the creation of sustainable and competitive development.

V. Babenko (2019) suggests that a national innovation system is a comprehensive means for creating and developing intellectual property and transforming it into innovative products. In other words, by stimulating the development of intellectual property, the country contributes to strengthening the innovation potential and supports cooperation between different participants in the innovation process through the transfer of

intellectual products. The development of intellectual property is becoming an important step in stimulating innovation and promoting partnerships for the further development of innovative solutions and products. One cannot but agree with the author of this article and note that to ensure the growth of the Ukrainian economy, significant changes are needed in incentivising the developers of intellectual products, and their legal protection, and creating favourable conditions for the successful introduction of new ideas to the market and their commercialisation. In this context, it is important to promote an innovative environment that will lead to the creation of innovative products and technologies, as well as ensure their effective protection at the legal level. In addition, the state should facilitate the promotion of these ideas to the market by simplifying the procedures for commercialisation and development of innovative enterprises. Only such fundamental changes will create a powerful innovation sector that will contribute to economic development and ensure Ukraine's successful competitive positioning in the global market. Based on the study by V. Babenko (2019), as well as the annual Global Innovation Index by the World Intellectual Property Organisation (Dutta *et al.*, 2022), it is worth noting that Ukraine's position in most rankings that assess the country's level of development, innovation potential and technological capabilities does not meet the requirements and expectations at this stage of the country's development. Until 2019, Ukraine's position in various rankings was slightly increasing, and at the moment the country ranks 57th in the WIPO Innovation Scorecard, which is 10 positions lower than it was in 2018. This is hard to accept if the state is striving for active development and an increase of innovation potential, but since 2019 there have been several objective reasons that have influenced

this, as described in a study by V. Babenko and M. Hlivetska (2018). The main reasons that impede the qualitative growth of innovation in Ukraine are high social tension and the low living standards of the majority of the population. These factors also include the uncertain political situation with certain territories, conflicts with other states over Ukraine's European course and its position in domestic reforms, and the effects of the global financial crisis. A combination of objective circumstances also contributes to the situation, including the transition to a post-industrial development path and the weakness of the economy. Political instability due to the low level of trust in the government and the upcoming elections also adds to the unfavourable conditions for innovative progress in the country.

It is safe to assume that the coronavirus pandemic was a major threat not only to Ukraine but also to the entire world, but after Russia's full-scale invasion, there was a need to respond to the challenges as soon as possible, because, with the outbreak of war, completely different problems began to arise. O. Kronda and O. Zosymenko (2022) considered the importance of intellectual property in the context of martial law in Ukraine. The authors of the article emphasise that intellectual property is a key area that contributes to the economic development of the state, even in an extremely difficult period, and allows it to pass the tests step by step. The effective management of the intellectual property portfolio during martial law is particularly relevant, as it helps to avoid potential litigation in the future. It is also worth noting that data storage for the protection and enforcement of intellectual property rights in Ukraine after the transition to a post-war economy is an extremely urgent task. The article emphasises the importance of the role of the Ukrainian Institute of Intellectual Property (Ukrpatent) as

the national intellectual property authority in ensuring the necessary functions and continuous operation of the state system of intellectual property legal protection even in difficult conditions of martial law. According to an analysis of data from the Ukrainian Institute of Intellectual Property (2022), the number of registered industrial property rights in the first half of 2022 increased significantly compared to 2021, which confirms the continued development of intellectual property even under martial law. O. Kronda and O. Zosymenko (2022) also analysed the latest changes in intellectual property legislation during martial law, which show that intellectual property continues to develop actively and that European integration processes in this area are being strengthened and implemented in Ukraine. The study emphasises the need for further development of intellectual property even under martial law, and the provision of an effective mechanism for the protection of intellectual property rights and their gradual improvement is supported by friendly countries and the international community to implement European integration processes in Ukraine.

To encourage innovators and inventors to make discoveries in the field of technology, there must be factors that facilitate the inflow of interested scientists. One of the most important factors is the protection of intellectual property rights. Given the peculiarities of the current legal regime and the specifics of conflicts in the field of intellectual property, it can be concluded that changing territorial jurisdiction and remote consideration of cases is not the most effective means of ensuring the protection of intellectual property rights. For more information on the peculiarities of judicial protection of intellectual property rights during martial law and the peculiarities of using alternative dispute resolution methods, see L. Halupova (2022). The author notes

that military actions in certain territories of the country may complicate the exercise of the right to protect the results of intellectual and creative activity, and therefore the issue of using alternative dispute resolution methods for disputes and conflicts arising in the field of intellectual property rights is relevant. At present, such methods can justify the purpose of their emergence, namely, to help the judicial system effectively protect intellectual property rights. This article offers alternative dispute resolution methods, namely negotiation, mediation, dispute resolution with the participation of a judge, arbitration, settlement agreement and other possible options. Any meeting can be held online on a variety of different platforms, and these dispute resolution methods are no exception, and can also be settled without the need for personal meetings. It is also worth noting that alternative dispute resolution methods have both advantages and disadvantages. Among the advantages are their versatility and flexibility, as there is a choice among many types of dispute resolution, and decisions made using one of the alternative methods can achieve benefits for both parties, while reducing financial and emotional costs. This approach promotes mutual satisfaction of the parties and ensures their joint responsibility for the implementation of the decision. Among the disadvantages are the delay in the process and the postponement of liability, as well as the contractual nature of decisions that can be used by an unscrupulous party to the conflict. At the same time, each party freely chooses how to protect its rights and interests. In the context of martial law, the choice of a method of protecting intellectual property rights requires careful consideration of various criteria, such as the object and subject matter of the conflict, national or cross-border nature of the violation, security of the venue, threats to life and health, and the parties' desire

to maintain good business relations and establish legal cooperation. The state should ensure the availability of both judicial protection and protection of intellectual property rights through alternative means, as well as inform the public about the variety of ways to protect the rights to the results of intellectual and creative activity.

One of the key factors affecting the development of innovation potential is security, namely the protection of intellectual property rights and its objects. According to I. Malinovska (2018), the following system of current trends in the legal protection of intellectual property would be the most correct: 1) scientific discussions on the consistency between the doctrine of human rights and the protection of intellectual property rights, in particular in the field of protection of human life and health; 2) expansion of the scope of influence of the public element in the system of legal protection of intellectual property, in particular, expansion of the rights of the patent holder to protect the public interest from the monopoly of patent rights in the field of pharmacy; 3) dependence of the regime of legal protection of intellectual property in national legislation on the established regime provided for by the Agreement on Trade-Related Matters. These trends are aimed at ensuring more effective protection of intellectual property rights, as well as at adapting the legal system to modern challenges and technological changes. O. Korotun (2019) notes that due to the numerous articles of the Code of Ukraine on Administrative Offences (1984) providing for liability for violations of legislation in the field of intellectual property, as well as the diversity and specificity of the objects of administrative and legal protection, the Supreme Court can generalise the application of legislation by courts in cases of administrative offences in the field of intellectual property, in particular in cases of violations

on the Internet. The author also notes the importance of the fact that today intellectual property plays an important role in the socio-economic development of the state, and therefore the protection of intellectual property rights, including their effective enforcement, must meet modern requirements. This may require improvement of legislation, in particular procedural legislation, to improve legal mechanisms for the protection of intellectual property rights holders.

Regarding administrative offences in the field of intellectual property, this issue is addressed in the study of O. Gerasimenko (2022), where the author notes that the most reasonable concept is the one that considers the general object of administrative offences in the field of intellectual property at the highest level of generalisation and covers all social relations that are subject to protection under administrative and tort law. This concept addresses the actual infringement of intellectual property, i.e., the actual violation of the owners' rights to intellectual results and creative activity. This approach is aimed at a broad understanding of intellectual property and covers various aspects of its protection, including liability for infringement of intellectual property rights, in particular on the Internet. Consideration of all aspects of public relations in the field of intellectual property allows for more effective control and response to infringement of intellectual property rights and ensures fuller protection of their interests. Furthermore, the author comes to a definition of the general object of an administrative offence in the field of intellectual property and believes that this is the entirety of legal relations protected by administrative and tort law and which is negatively affected by a specific actual infringement. This definition can be considered correct and consistent with the essence of the object of an administrative offence in the field of intellectual property.

It clearly describes what constitutes the subject matter of the infringement, namely the totality of legal relations protected in this area. In addition, it considers that an administrative offence can only occur if there is a specific negative impact on these legal relations.

After considering the urgent issues of administrative liability in the field of intellectual property, it should be noted that there are situations in which stricter liability for violations of intellectual property legislation should be applied, as disclosed by V. Maryniv and M. Demura (2021). While exercising the right to protection of intellectual property in the context of criminal law and criminal procedure, it is necessary to ensure guarantees of individual rights. The authors identify the following specific guarantees to ensure the rights of the victim of a criminal offence related to the infringement of intellectual property rights:

1. The right of the victim to file a report or notice of a criminal offence, as well as to file a civil action for compensation for damage. The victim also has the right to enter into a reconciliation agreement.

2. The exercise by a victim of the right to file a complaint or report a criminal offence committed leads to the initiation of criminal proceedings.

3. The investigator and prosecutor are obliged to enter the relevant information into the Unified Register of Pre-trial Investigations and initiate an investigation of a criminal offence, while the court is obliged to consider a civil claim decide on the matter and provide other duties that guarantee the realisation of the victim's rights.

4. The Criminal Procedure Law provides for liability for failure to fulfil obligations to ensure the rights and legitimate interests of participants in criminal proceedings.

To develop the innovation potential of Ukraine, it is necessary not only to ensure the

protection of the rights of intellectual property rights holders, but also to encourage and stimulate scientists to work, and to promote the desire of citizens to develop in the field of technology. T. Hrachak (2019) suggested that the realisation of the social purpose of libraries aimed at preserving, organising, and broadcasting knowledge can be enhanced by introducing gaming technologies into library practice. This is a truly innovative knowledge management tool that has great potential for improving the efficiency of library services and engaging the audience. Gaming technologies in libraries can help to attract the attention of readers, especially young people, to educational and cultural resources. They store and transmit knowledge through engaging and interactive games. The introduction of gaming technologies in libraries will allow to creation of interactive learning programmes, virtual tours, game tasks and entertainment that will promote a more active and interesting perception of knowledge. This can improve audience engagement in the library's cultural and educational activities and increase interest in reading and self-education. The use of gaming technologies will also help to create interaction between librarians and users and facilitate the exchange of experience and knowledge. Given the potential of gaming technologies for preserving, accumulating, organising, and broadcasting knowledge, their introduction into library practice may be an appropriate step to increase the efficiency and social significance of libraries in modern society.

When considering the development of innovation potential, it is worth mentioning the positive impact of the article by N. Parkhomenko *et al.* (2021). It should be noted that the position of scientists is considered an important aspect of intellectual property management in research and higher education institutions. It indicates that the

commercialisation of intellectual property created in the course of the activities of such institutions is becoming one of the key functions, along with educational and research activities. An important step is the development and approval of appropriate intellectual property policies or rules that could regulate intellectual property issues in these institutions. This includes aspects of the acquisition and distribution of intellectual property rights to the objects created, mechanisms for commercialisation of these rights, as well as the distribution of revenues from such commercialisation. This view reflects real trends in the scientific and educational spheres, where the importance of maximising the use of intellectual property to support the financial sustainability and development of institutions is growing. Another important aspect is to ensure transparent and fair distribution of benefits among all parties involved in the creation and commercialisation of intellectual products.

T. Granchak and V. Bondarenko (2021) point out that the use of immersive technologies in the library and information sphere can be a powerful tool for stimulating the innovative development of science and education. The introduction of such technologies in libraries will help to unlock their potential and ensure a more efficient organisation of information services and resources. This approach will help increase the availability of knowledge, attract new audiences, and improve the quality of information and library services. In addition, immersive technologies can stimulate innovative approaches to research, training, and development, which will contribute to progress and increase the level of knowledge in the scientific and educational spheres.

O. Ulitina and D. Pyliuchenko (2021) investigated the legal regulation of creative industries, which are a key element in the economic system of modern countries. These industries, which are

characterised by significant creative potential, have a significant resource for the development of the country and strengthening its international relations. Since creative industries actively operate with intellectual property, especially copyright, legal regulation in this area is of great importance.

The legal regulation of creative industries is mainly based on intellectual property law, as they are responsible for the creation and use of various intellectual products. However, each industry also requires its specialised legislation that considers its specifics. In Ukraine, the creative industries became a priority in the early 2010s, so the legal regulation in this area is loose and needs to be further developed and clarified. In particular, it is important to bring regulations into sync and harmonise the conceptual framework for more precise and systematic regulation of creative industries. Such a process of development and improvement of legal governance in this area will further strengthen these industries, and ensure their more efficient functioning while promoting innovation, cultural development, and economic growth of the country.

O. Izbash (2021) notes that, despite its shortcomings, a new future for digital art is beginning, one that promises to help reduce the distortions of the first internet wave and provide greater compensation for artists around the world. With OpenLaw and NFT, content developers are empowered and should help create a fair and creative landscape in the spirit of Web 3.0. The author's conclusions are not entirely true as more and more new technologies are being created in the world, but not every one of them remains relevant for a long time and may not last long. Speaking specifically about NFT, the technology gained popularity as quickly as it lost it. Following the works in the digital dimension, you can find a lot of works that have risen in price very sharply and were desired by many people, and people paid

a lot of money for them. But over time, some of these works have lost a lot of value, which means that they are no longer popular. This indicates a decrease in people's interest in NFT technology, which means that it is necessary to improve legislation not for each new technology but to make it more systematic and flexible so that certain rules can be quickly developed to regulate new technologies that are gaining popularity.

Regarding the protection of intellectual property rights on the Internet, I. Kovalenko (2018) points out that the problem of protecting copyright and related rights on the Internet is of increasing interest, as no unambiguous position has been developed for all states. The researcher cites such ways of preventing violations of intellectual property rights on the Internet as digital signatures, digital marks, limited functionality, through which the author of a work provides a particular user with access to his or her property, and other methods. The researcher gives useful advice on how to improve the protection of intellectual property rights, but not all of them can be used for any object because the number of types is very large. Therefore, it is necessary to prevent new gaps created by the development of technology as soon as possible and to improve the development of intellectual property legislation.

Based on the article by H. Sytnyk *et al.* (2022), it is reasonable to agree with the authors who believe that to solve the problems of innovative development of the state, it is necessary to apply an approach that involves overcoming institutional weakness and consider instability and uncertainty in its functioning. As part of such development, it is important to introduce new political and administrative processes, models and technologies that will contribute to achieving an acceptable level of national security. The article also notes that political technologies can influence the

public consciousness when choosing priorities in innovative development, and the dynamics of this process are non-linear, which necessitates changing the goals, methods, and technologies in the activities of management entities and ensuring a balance between the political and administrative components. An effective solution to the challenges of innovative development involves the introduction of flexible and adaptive approaches to governance, ensuring the sustainability and security of the state, as well as considering the complexity and dynamics of the modern world.

Thus, this study highlights the need to develop and implement effective mechanisms for the protection of intellectual property. This may include fair and speedy judicial practice, rigorous mechanisms for detecting and stopping infringements of intellectual property rights, as well as promoting innovative developments and creating an ecosystem for their implementation. This view suggests that intellectual property protection can be a broader platform for enhancing national security and sustainable development, both in the technology sector and in the economic and geopolitical context.

Analysing the material of N. Kapitanenko (2022), it can be said that the proposal to adopt the Code of Ukraine on Intellectual Property may be a step forward in the development of legal regulation of the intellectual property sector in Ukraine. Harmonisation and updating of the legislation in this area with international norms and standards can contribute to better protection of intellectual property rights and stimulate innovation and development of the sector. However, it is important to consider the diverse interests of participants in intellectual property relations and to strike a balance between public and private interests. The Code should clearly define the procedures for registration of intellectual property

rights, management, and control in this area, ensuring the protection of the rights of intellectual property owners and promoting innovation and creativity. The main task will be to develop the text of the Code with due regard to important details and to consult with all stakeholders to ensure transparency, fairness, and effectiveness of the new legislation.

Ukraine receives support from its Western partners, which was considered by H. Androshchuk (2022). The author writes that before Russia's invasion, Ukraine was a regional science and technology centre. The technology sector accounted for 4% of GDP, employing about 5,000 IT companies and 285,000 IT professionals. From international financial support in cryptocurrencies to platforms for companies that help those fleeing war, such as Uber and AirBnB, science and technology are essential to the country's defence capabilities. The sector will also be important for Ukraine's long-term aid and recovery. It will be a platform on which to provide jobs, attract investment and create the latest technologies. I agree with the author that this is the right approach. The crisis may cause unfavourable circumstances, but it also opens up new opportunities. Supporting and developing the innovation and creative sector, as well as the intellectual property system can be key to stimulating technological development and economic recovery. By fostering the development of an intellectual property infrastructure and supporting innovation, Ukraine can create favourable conditions for the development of new technologies and increase competitiveness in the global market. This could also lead to the creation of new jobs and increased economic growth.

Conclusions

Summing up the material presented, it is worth noting that it is difficult to overestimate the

impact of intellectual property on the formation and development of the state because, in today's progressive world, it is extremely important to rely on innovation and encourage citizens to new scientific achievements. The article examines the role of intellectual property in stimulating innovation and technological development, as well as how it affects the innovation potential of organisations. The article analyses Ukrainian legislation, the country's performance at the international level, and data on domestic development. The scientific works of Ukrainian and foreign scientists who study the impact of intellectual property on innovation processes and results in various industries are studied. It can be stated that scientists who consider quite different issues in their works believe that Ukraine is in the process of its formation in the field of technology development. The article examines the role of legal regulation in ensuring the effective protection of intellectual property and identifies factors that can facilitate or delay the development of innovation potential in the context of technological development.

It is worth emphasising the need to create a High Court of Intellectual Property, as it will be more competent than others in hearing intellectual property cases and will contribute to the development of legal practice. However, the creation of such a body may lead to increased costs and isolation of this judicial body, which will be very separate from other legal practices. Therefore, it is necessary to study the experience of other countries and to consult and share experiences with foreign partners in this area. The impact of technological progress on intellectual property

should be further studied, as there are many unexplored or not fully disclosed issues, such as the creation of the High Court of Intellectual Property, legal regulation of artificial intelligence, block-chain technology, and many others.

The state's reliance on the development of new technologies can be regarded as one of the key factors in the progress of the economy, technology, science and culture. In the area of intellectual property, as a driving force for innovation, it is necessary to improve protection and take all possible steps to develop new and improve existing legislation, because those citizens who decide to engage in technology should be aware of their protection from unfair competition. It is also important to improve cooperation and hold as many educational events as possible, for example, to exchange experience in various technology fields, from military to medical and educational, which will certainly lead to the development of Ukrainian society and the state as a whole.

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Conflict of Interest

None.

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Роль інтелектуальної власності в розвитку інноваційного потенціалу держави

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Анотація

Війна створює серйозні виклики для економіки, національної безпеки та розвитку країни загалом, а інновації можуть стати важливим інструментом в роботі над подоланням цих викликів. Мета дослідження – вивчити вплив інтелектуальної власності на стимулювання та сприяння інноваційному розвитку в контексті технологічного прогресу. Серед використаних методів наукового пізнання – аналіз, синтез, дедукція, порівняння, узагальнення та систематизація; застосовано системний підхід для створення комплексної методології аналізу ситуації на ринку інтелектуальної власності. У матеріалі досліджено, як саме інтелектуальна власність може стимулювати наукові пошуки, сприяти розробці нових технологій, підвищувати конкурентоспроможність усередині держави та сприяти економічному зростанню. Проаналізовано праці українських вчених, які позитивно впливають на розвиток інноваційного потенціалу України. Представлено думку про необхідність розвивати та вдосконалювати захист прав інтелектуальної власності, адже це сприятиме відкриттю нових технологій та залученню науковців до їх розробки. Розкрито питання створення Вищого суду з питань інтелектуальної власності, виявлено переваги та недоліки, що можуть виникнути із запровадженням такого органу. Обґрунтовано позицію щодо заохочення та проведення роботи з населенням, для того щоб залучати науковців та фахівців до відкриття та розробки нових технологій, обміну досвідом, а також акцентовано на необхідності проведення навчальних та освітньо-наукових відкритих заходів, що сприятиме розвитку інноваційного потенціалу України. Розглянуто різні методи заохочення населення до відкриття нових технологій і роботи в цьому напрямі, як-от правові механізми, що захищають власників прав інтелектуальної власності від недобросовісної конкуренції, а саме адміністративна та кримінальна відповідальності. Практична цінність отриманих результатів полягає в тому, що вони детально розкривають проблемні питання інноваційного потенціалу держави, а також виявляють напрями, що потребують вдосконалення, і надають рекомендації щодо продуктивного розвитку цифрової держави

Ключові слова: цифрова епоха; технології; розвиток правового регулювання; захист правовласників; інновації; охорона прав
