

Features of the economic and legal regulation of relations in the field of intellectual property of industrial enterprises

Novorodovska T. S.

*Ph. D., associate professor
National metallurgical academy of Ukraine
Dnipro, Ukraine*

Traiduk N. A.

*Assistant
National metallurgical academy of Ukraine
Dnipro, Ukraine*

Abstract

The article discusses features of the economic and legal regulation of relations in the field of intellectual property of industrial enterprises in terms of integrated approach to the processes of legal protection and use of intellectual property, and systematizes the factors affecting the economic and legal regulation of relations in the sphere of intellectual property of the modern enterprise

Keywords: INTELLECTUAL PROPERTY, ECONOMIC AND LEGAL REGULATION, COST OF RIGHTS EVALUATION, PROTECTION OF RIGHTS, OBJECTS OF INDUSTRIAL PROPERTY, ENTERPRISE, PRODUCTS

At the present stage of Ukraine economic development, particularly in the segment of domestic producers, the objects of intellectual property as results of intellectual (creative) work become increasingly significant. They include patents, utility models, industrial designs, trademarks, trade secrets, literary and artistic works, databases, computer programs, phonograms and videograms etc.

The promotion of an innovative model of economic growth and the integration of Ukraine into the European community require substantial ascension of the role and importance of national intellectual capital. This raises the task of revitalization of entering of the state in the international structures that govern the intellectual property relationships, gaining mem-

bership in the European Union, ensuring the participation in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and so on. Although Ukraine has considerable scientific and technical potential for that, the national innovation system does not yet meet nowadays requirements.

Modern enterprises as commodity producers perform "promotion" of their products in the relevant markets (both domestic and international) not only relying on certain qualitative parameters of the products, but also trying to distinguish their products with the use of modern advertising and marketing technologies, objects of intellectual property rights. In particular, this applies to utility models, industrial designs (art and design solutions concerning appearance

of products, models, packaging, labels, etc.) and trademarks that allow personalizing the products of a particular company-producers in the market of similar products, making them "recognizable" by a wide range of customers .

Of course, drawing attention to their products by developing interesting and unusual packaging or forms, producers must take care of that their ideas brought the income and were not available for use by competitors; i. e. to legally prohibit a competitor unlawful and free use of the results of their intellectual and creative activity.

It is worth noting that the dissemination of practice of using intellectual property rights determines processes of modernization and adaptation of national legislation to modern business processes. It is therefore important to explore the problem of improvement of the system of economic and legislative regulation of relations in the field of intellectual property of industrial enterprise.

To achieve this goal it is necessary to analyze the theoretical and legislative frameworks of economic and legal regulation of relations in the field of intellectual property, to identify existing regularities, problems and contradictions

Today, significantly changing is attitude to intellectual property, which consists in the understanding that the exclusive right to dispose of such property belongs, first of all, to its creator. This important provision is reproduced in the Basic Law, the Constitution of Ukraine, Article 41: "Everyone has the right to

possess, use and dispose of their property, results of their intellectual and creative activity..."

However, the process of formation of the intellectual property system in Ukraine is linked with a number of problems concerning the regulation of relationships between actors of innovation activity, uncertainty in manner of commercialization of intellectual property objects, and the imperfection of methods of assessment of their value.

Intellectual property is endowed with properties of both economic and legal nature. The property as an economic category expresses the relationship between people on the appropriation of objects of property and, above all, of the means of production and its results. In turn, the property as a legal category expresses legislative fixation of economic relations between individuals and/or legal persons on the possession, use and disposal of intellectual property through the system of legal norms [1]. In general, the system of economic and legal regulation is a set of mechanisms, methods, techniques and tools of economic and legal impact.

Of course, given the ongoing development of national economic and legal thought and such circumstances that the category of "intellectual property" is considered from the perspective of at least three sciences - economics, law and sociology - the views of scientists cannot fully coincide. However, similarities on understanding this category are present (table 1).

Table 1. The definition of the category of "intellectual property"

Author of definition	The essence of the definition	The approach to the interpretation of intellectual property
A.A. Chukhno	Intellectual property is a special form of property because it is created not by ordinary work, but by creative, intellectual work ... these are ideal creations, based on the material carriers. The peculiarity of intellectual property relations is that they consist of the results of intellectual work, i.e. they are consequences of human creativity. They are the creativity elements as components of intellectual work that define the individual nature of its products and form a qualitative criterion of distinction of intellectual work [2].	Ethical and economic
O.B. Butnik-Siverskyi	Intellectual property in the conditions of commodity-money relations acquires the signs of goods or capital. The economic nature of intellectual property is manifested through its commercialization, using the created intellectual product directly at the enterprise where surplus value (profit) consists of two parts: a portion of surplus value, which is part of the intellectual capital	Socio-economic (the author calls it "economic and financial")

	obtained in pure form; and the remaining surplus value obtained during the sale of products with the use the already updated or improved tools and objects of labor, hired labor, which is the basis for their further reinvestment [3].	
P.M. Tsybulov	Intellectual property is the result of intellectual creative activity, the result of the own creative search, which has to be presented as an object and be capable of reproduction [4].	Socio-economic
O.P. Orliuk	Intellectual property is the result of intellectual and creative activity that meets the requirements of current legislation. Only in this case the legal protection is given to it [5].	Economic and legal

Thus, one can conclude that the property rights determine mostly the owner rights to the economic component of intellectual property and non-property rights determine the creative part of the intellectual property. Personal non-property rights as well as property rights cannot be artificially isolated from entire institution of intellectual property and only in the unity of their most important characteristics they determine the specificity of the economic and legal category.

Law of Ukraine "On the assessment of property, property rights and professional valuation activities in Ukraine" equates intangible assets, including objects of intellectual property rights (OIPR) to the property, which is valued. In other words, the assessment applies not to OIPR themselves, but to the rights to them. This has important consequences: the subject of assessment (property rights) is an intangible asset, and if the legal term of validity of these rights terminates then the subject of valuation disappears [6]. Property rights to OIPR is only valid on the territory of the country, in which these rights were acquired. The necessary condition for the valuation of property rights to OIPR is separability (apartness) of the latter from the subject of these rights [6].

However, the functioning of any object of intellectual property rights in the framework of both a certain enterprise and a larger environment (e.g. in certain markets of goods and services) takes place in the plane of a system of economic and legal regulation and, therefore, depends on factors of this system. Therefore, it seems reasonable to formulate a legislative definition of the notion of "system of economic and legal regulation". The technique of intellectual property control existing in Ukraine today is not quite perfect. A significant drawback of existing control system is absence of comprehensive approach to the processes of information management, expertise, legal protection, economic valuation and use of objects of intellectual property.

Today the intellectual property management actually

ends at the stage of issuance of protection document. There is no management system, which would addresses issues related to the assessment of rights and introducing them into economic circulation, that is related to the economic impact: gaining profit or other benefit that is the main reason why, in fact, the objects of intellectual property rights are created [7]. Therefore, the process of creating more advanced forms of management of this specific form of socially useful activity.

An important problem is the incompleteness of formation of the structure of the state system of protection of objects of intellectual property, especially in law enforcement authorities. In the country there are no professionals in marketing of intellectual property, there is no integrated state system of education, training and upgrading experts in intellectual property protection. There is such problem as lack of awareness of society concerning the protection and defense of rights that often leads to violation of rights and has a negative impact on both economic development and international image. It is also necessary to understand that the cause of majority of violations of intellectual property rights is economic. Only the person who has the rights to a specific intellectual property also has the rights to use such an object [8]

Today we can confidently say that in the market for consumer goods and services the direct competition between goods gave way to that between trademarks. Consumers do not bother themselves with study the consumption properties of specific goods, fully trusting brands, which they know. Because of this, the role of the legal protection of trademarks increases. Like other types of property, a trademark has its cost, which can increase substantially over time. There are cases when the value of the trademark reached such an extent that it becomes more expensive than all tangible asset of the company. Therefore, the valuation of the rights to an object of industrial property, the trademark, proves the efficiency of use of this object as a product capable of bringing significant revenue

to the enterprise owning this object.

The combination of elements of comparison is formed of the factors, which influence the value of intellectual property rights. These factors, in particular, include: the availability of legal protection of intellectual property rights; financial conditions of contracts, of which the subject is the intellectual property rights; industry or area, in which the object of intellectual property rights is used or valuation of

property rights is performed; functional, consumer, economic and other characteristics of the object; level of novelty; the remaining useful life; suitability for industrial (commercial) use. Following the results of the above analysis, we systematize factors affecting the economic and legal regulation of relations in the field of intellectual property of modern enterprise (Figure).

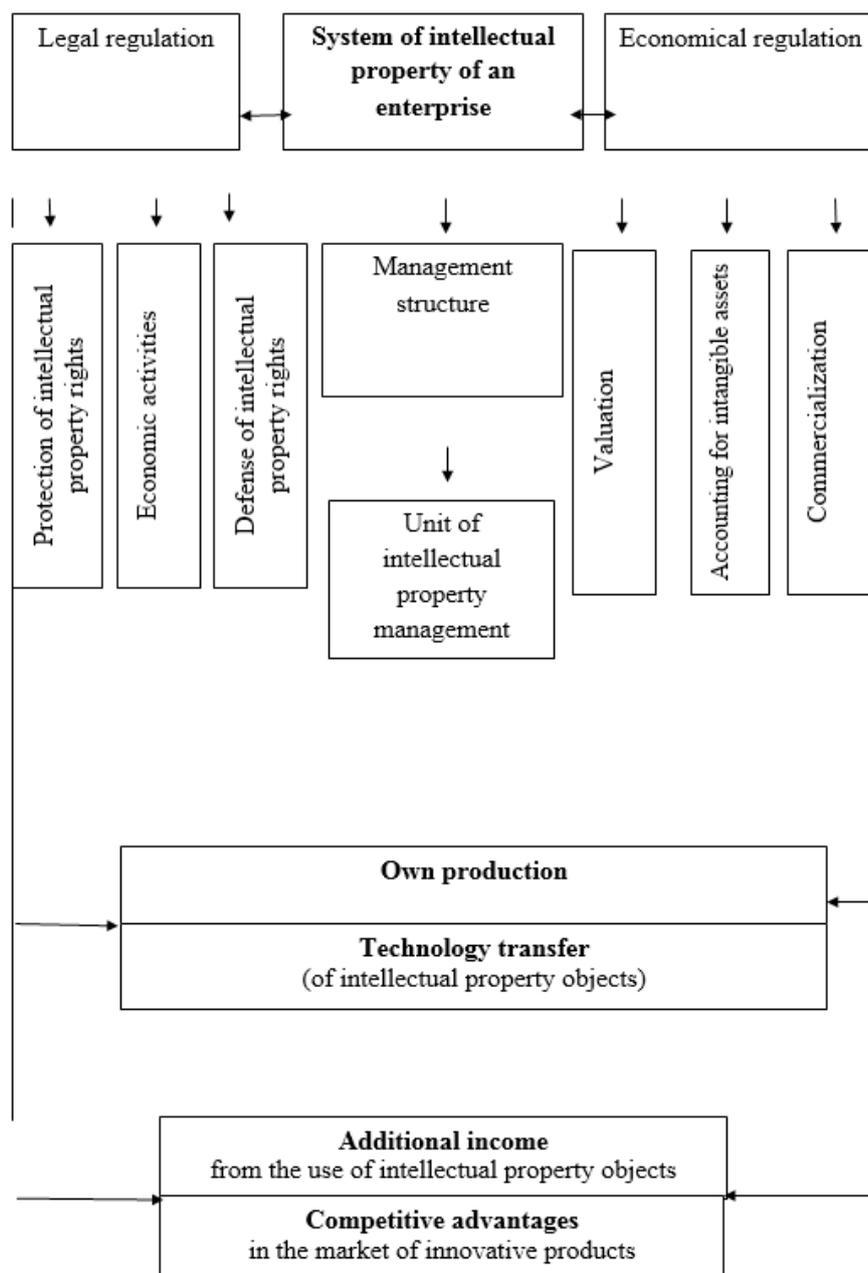


Figure. The structure of economic and legal regulation in the field of intellectual property of enterprise

The competitiveness of an enterprise in the market of innovative products, the volume and nature of the use of scientific and technical solutions and means of individualization, which are the industrial property objects (inventions, industrial designs, trademarks, trade names, etc.) in economic and production processes will

depend on how efficiently the above mentioned system will work in the company.

For the effectiveness of the above-mentioned process, it is extremely important to perform essential analysis of the national legislation in the field of intellectual property rights with account of the interna-

tional practices. Optimization of law-making in the field of intellectual property in Ukraine would effectively promote the development of intellectual potential of the Ukrainian nation, the implementation of economic breakthrough in the conditions of the global economic crisis, movement to the production of high innovation technologies and joining the economically developed countries.

Conclusions

Dissemination of practice of using intellectual property rights determines processes of modernization and adaptation of national legislation to modern business processes, therefore, it is important to explore the problem of improvement of economic and legislative regulation system of relations in the field of intellectual property of industrial enterprise.

Intellectual property is endowed with properties of both economic and a legal nature. The property as an economic category expresses the relationship between people on the appropriation of objects of property and, above all, of the means of production and its results, whereas the property as a legal category expresses legislative fixation of economic relations between individuals and/or legal persons on the possession, use and disposal of intellectual property through the system of legal norms.

Therefore, it is necessary to apply an integrated approach to the processes of legal protection and use of intellectual property that would take into account all the factors affecting the economic and legal regulation of relations in the field of intellectual property of a modern enterprise.

References

1. Leoschenko D.I. (2012). Coexistence of two concepts of intellectual property right in Ukraine: philosophical aspect of the problem. *Humanitarian Bulletin of Zaporozhye State Engineering Academy*. No 49, p.p. 278-284.
2. Halaim N.O. Legal protection of industrial samples in Ukraine. Abstract of a thesis of Cand. Sc. speciality 12.00.04: Taras Shevchenko National University of Kiev. Kiev, 2001.
3. Butnik-Siversky O.B. (2011). Economical and legal problems of providing of assessment and accounting of property rights of intellectual property. *Law of Ukraine*. No 9, p.p. 149-157.
4. Tsybulov P.M. *Vvedennya do intelektual'noi vlasnosti* [Introduction to intellectual property]. Textbook. Kiev, State institute of intellectual property, 2008. 75 p.
5. Orlyuk O. (2011). Intellectual property in Ukraine: experience, legislation, problems, perspectives. *Law of Ukraine*. No 3, 7 p.
6. Kubah A. I. *Pravo intelektual'noi vlasnosti* [Intellectual property law]. Textbook. Kharkiv, National University of Urban Economy in Kharkiv, 2008. 131 p.
7. Cherep A.V., Yarmosh V.V. (2010). Diasadvantages of control system of intellectual property of the enterprise. *Bulletin of Zaporozhye national university*. No 2 (6), p.p. 88–90.
8. Otleikina P.V. (2013). Problems of protection of intellectual property in Ukraine. *Development management*. No 19 (159), p.p. 22-23.

METAL
JOURNAL

www.metaljournal.com.ua