

Using intellectual property as a competitive advantage of modern enterprise

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Article

The article discusses features of use of intellectual property (objects of industrial property such as inventions, industrial designs, trademarks) and goodwill by the modern enterprises as a competitive advantage in the market of innovative products and means of competition and prevention of unfair competition.

Key words: INTELLECTUAL PROPERTY, OBJECTS OF INDUSTRIAL PROPERTY RIGHTS, INNOVATIVE PRODUCTS, GOODWILL, BUSINESS REPUTATION, COMPETITIVE ADVANTAGE, COMPETITION

In the market economy, new forms of management are increasingly introduced that require a special approach of the enterprises to the employment of intellectual resources. This approach takes into account the facts that the market is based on fierce competition and that products can be competitive and successful in the consumer only if they include inventions, industrial designs, know-how.

At the present stage of development of Ukrainian society, the sphere of intellectual property becomes an integral part and has significant impact on economic activity of enterprises. The intellectual property, in the broadest sense, means secured legal rights on results of intellectual activity in the industrial, scientific, artistic, production and other fields [1]. Among these results there are objects of industrial property rights (patents, utility models, industrial designs, innovations, trademarks). Industrial property is a type of intellectual property that can be defined as the results of scientific and technical creative work, which can be used for the benefit of society in any

purposeful activity of people.

Understanding the essence of intellectual property, the conditions of its emergence and transformation into intangible assets opens up new opportunities in realization of the creative potential of employees of enterprises and organizations. This is confirmed by global trends: firstly, the most important part of the national society wealth is intellectual product; secondly, industrial activity is increasingly becoming a continuous process of intellectual innovations; thirdly, the competitiveness of businesses, survival of entire industries directly depend on the ability to perceive and elaborate intellectual product; fourthly, a phenomenon of intellectual property becomes of particular importance in overcoming the crisis and the reconstruction of economy [2].

It is important not only to be aware of the importance of intellectual property protection, consider intellectual property as a means of protection of products or technology, but also to use it as a competitive advantage in the field of entrepreneurship and busi-

ness, as the basis of competition. Therefore, managers must take responsibility for the development of the sphere of intellectual property on their enterprises, solve problems concerning strategy of its use both in own production and in the market of innovative products.

Entering the market is always associated with the competition. Competition is the main feature of a market economy where economic actors compete for better implementation of their economic interests. In conditions of great saturation and even oversaturation of world commodity markets, when supply exceeds demand, each product (and commodity producer) comes into sharp struggle for the consumer. As the regulator of a market economy, competition is based on freedom of choice, it creates market prices, balances supply and demand, stimulates reduction of production costs and introduction of new technologies and objects of intellectual creativity.

Today, such methods of competition are of crucial importance, which are related to the provision of goods with unique features: innovation, quality, high aesthetic properties and design. These features of products are provided by objects of intellectual property: inventions, industrial designs. Producing uncompetitive production brings financial and moral losses. The creation of a pure patent and competitive product allows extending assortment and nomenclature of domestic national exports and implementing it effectively in the market.

For effective development of the sphere of intellectual property an important role belongs to the creation of business units to manage this area (patent licensing, technology transfer, innovation, intellectual property management centers or centers of commercialization of intellectual property and technology, etc. Those enterprises, which have established such units that are staffed by highly skilled experts, professionals in the field of intellectual property, have guarantees of producing competitive products [3]

Today there are certain reasons that prevent the creation of the divisions on intellectual property in enterprises. One of them is the underestimation of the importance of managing the development of intellectual property. Managers believe that the difficult economic situation of enterprises, reduction of the number of workers necessitates elimination of patent-licensing departments that already exist, and the companies not having such departments have been slow to create them. This situation is also explained by the fact that in the existing typical provisions of the companies, the intellectual property units preferably are not provided, and it is problematic to create them within the currently existing number of staff and payroll.

Meanwhile, the level of the economic management and functioning of the enterprise in many cases depends on new ideas and their practical implementation in the production process. Therefore there is a need for organizational streamlining of knowledge accumulated in the company, in particular by improving enterprise management system, with a mandatory inclusion of a subsystem of intellectual property management. This approach to management would meet current and future requirements of market economy and would contribute to:

- increase in effectiveness of use of marketing in studies of innovative products market;
- timely response to changes in market conditions through accurate forecasting of technological change on the basis of patent information research;
- the creation of competitive products based on intellectual property rights that meet requirements of world novelty and high functional properties.

Ukraine is going through a difficult phase of market reforms in the economy. Compared with developed countries of the world, we still have little experience in using intellectual property resources, so an advantage will be gained by those companies whose managers quickly realize that intellectual property is the foundation of the competitiveness of their product on the market.

The development of the national economy should be performed under conditions when technological progress becomes the main source of growth in economic efficiency through accelerated implementation of inventions into objects of engineering and technology. The systematic creation and production of equipment and technology competitive in the world market assume orientation for the future demand, given the market situation, merging of science, development, design, production and marketing into an overall technological system. This system will ensure the creation of new production methods that will lead to the development of technological capacity, changes in technologies, which in turn will stimulate innovation [3].

Using intellectual property allows businesses and authors-creators to receive the following practical opportunities and benefits:

- documentary evidence of ownership and putting intellectual property objects on the balance sheet of the companies;
- additional revenue through the transfer of rights to use intellectual property and to ensure reasonable regulation of prices for products of innovation activity of the company;
- payment of royalties to individuals (authors, holders of intellectual property);
- the formation of the significant share capital, and

others.

License-contractual relationships are the basis of fair competition in the use of intellectual property rights. License Agreement on the use of invention, utility model, industrial design, or trademark is defined as the agreement whereby the licensor retains ownership of the intellectual property that is transferred to third party for use. Licensee, by using the object of intellectual property rights, obtains benefits and additional income. In this case, the licensor receives a certain fee from the licensee. Determination of remuneration is one of the most difficult issues of licenses trade. There are various methods of its determination, such as a lump-lump sum, or (most often used) method of royalty, when payments are distributed throughout the term of the license. Such remuneration is usually charged as a percentage of each unit of a product that is made on the basis of intellectual property rights and sold. When setting the remuneration various factors are taken into account: efficient use of the invention or other technical achievements, return on sales, material savings during production, competitiveness of the product and its life cycle, and other parameters [3].

Today, while competition is sharpening, the winning company is the one, which most efficiently uses all the resources that are available, especially new technologies, of the mandatory component of which, is intellectual property. Therefore the question of

the development of new technologies and identifying potential objects of intellectual property rights has been and remains relevant. A lack of awareness of these issues is the reason why there is an obvious technological backwardness of Ukrainian companies from foreign competitors. However, being a strategic component of national production, basic industries determine the overall state of socio-economic development.

A special type of competitive advantage of modern enterprises is a positive business reputation (goodwill as intellectual property) that contributes to the creation of a stable demand for products, and hence to obtaining stable profits. On the contrary, damage to reputation of the business entity may lead to reduction of demand for products, losses, termination of activities, and so on. A certain economic value is embodied into business reputation.

The relationship and interdependence are traced between intellectual property rights and business reputation of enterprise: reliable protection and defense of intellectual property helps to strengthen goodwill and vice versa, intellectual property infringement prejudices reputation. In addition, goodwill, being intangible by nature, along with other results of intellectual activity is aimed at the implementation of the joint function, individualization of business entity (Figure 1) [4].

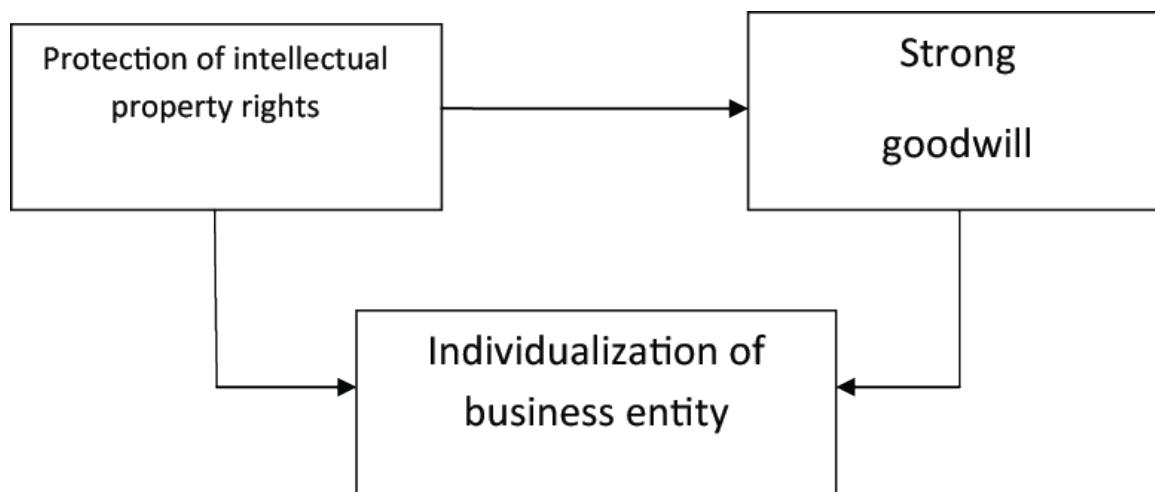


Figure 1. Relationship between intellectual property rights and goodwill of enterprise

Goodwill is considered to be as non-proprietary benefit of enterprise that has real proprietary impacts (costs of spending on creation of the image, cost of business links, value of future profits not yet obtained, etc.). The main component of maintaining and changing business reputation is the quality of their company, managers and staff employees. Goodwill is characterized by monetary assessment of "intangible capital", brand prestige, experience and skills

of managers, customer stability, and reputation in the commercial world.

However, the notions of "business reputation" and "goodwill" should not be confused because they have different legal nature: non-property business reputation is a non-proprietary benefit, and "goodwill" as an intangible asset that is clearly expressed in terms of costs [4].

The cost of "goodwill" is defined as the difference between the purchase price and the carrying amount of the company's assets. If the "goodwill" in accounting practice arises during the process of privatization or sale of enterprises, then, at the moment of establishing cost of sale, an excess of the purchase price occurs, which forms the value of the "goodwill". Today the "goodwill" is increasingly used in financial practice; the need in its evaluation and taking into account is occurred. Approaches to the evaluation of goodwill are based on additional incomes that it generates for the company [5].

Although in domestic practice the term "goodwill" is used during the purchase and sale of businesses, it should be noted that the definitions of goodwill, which given in the legal and regulation documents, differ [6]. This problem needs to be addressed.

Among other important legislation acts that require detailed attention by Ukrainian enterprises targeted at active participation in market competition race one should emphasize a competition legislation, namely the Law of Ukraine "On Protection of Economic Competition" and the Law of Ukraine "On Protection from Unfair Competition." Thus, the Law of Ukraine " On Protection from Unfair Competition " (Article 4) states that actions related to the use of signs, which were not registered in due course by proper person as intellectual property (trade marks, designs, etc.) contradict to honest practices in business and may be considered an act of unfair competition [7]

Competition legislation in the absence of practice of its interpretation is not filled with real content. Often antitrust agencies face a difficult dilemma: how to stay within the framework of processed approaches and to keep up with technological progress, which defines the conditions of the economy development and the functioning of markets [7]. Therefore, one should study the experience of the use of competition legislation, including that in the area of intellectual property, not only in domestic but also in foreign, European and the US.

Conclusions

Effective use of intellectual property as intangible assets is the shortest way to the formation of the system of competitive advantages of the modern enterprise, which will allow avoiding the legal, economic, ethical, contractual problems and will promote a favorable distinction of the enterprise production compared to products of competitors', the expansion of the customer base, increasing competitiveness of the enterprise and its cost, obtaining additional revenue through the use of intellectual property.

Intellectual property is an important component of innovation activity of collectives of enterprises, research institutions, all parts of national economic

mechanism intended to actively influence the pace of scientific and technological progress, improve the economic level of production.

Under present conditions, the scientific potential of the country increases, higher educational institutions of Ukraine train specialists focused on new forms of management, the introduction of modern progressive technologies with the use of intellectual property.

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