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Ukrainian intellectual property – innovative horizons

Abstract. Intellectual property and its importance increases, therefore it requires reliable and effective legal protection. International law norms harmonization being a part of those alterations. The approved National Strategy for the development of intellectual property in Ukraine till 2020 defines the general principles of the national intellectual property system priorities and prospects, e.g. goals, strategic directions and main tasks, the use and realization of which the state policy should pursue to undertake regarding the intellectual property sphere. The development of intellectual sphere in Ukraine requires both improving the regulatory framework and improving mechanisms for state governance of intellectual property and the development of institutional framework. Today the questions of improving the mechanisms of acquisition of intellectual property rights protection, improving stimulation in the field of intellectual property and establishment of effective mechanisms to protection of intellectual property rights are also actual.

Keywords: intellectual property, National Strategy for the development of intellectual property in Ukraine till 2020

Intellectual property has always been one of the basic and necessary elements of social development and human progress in general. The increase of intellectual property value as the driving force for the process of cognition and creation of material benefits acquires significance for states' economic, social and cultural development. Not belonging to the political sphere, intellectual property substantially affects international relations overall, the relations of particular states and regional groups.

Nowadays, the intellectual property role and its importance increases rapidly, it has already become the most valuable humanity asset. Throughout the entire world, the intellectual property is the subject of civil circulations. The demand for intellectual property rises intensively due to significant increase of intellectual activities, especially in regard to its effects on socio-economic development of any society. It often becomes the subject of wrongful acts, abuses, unauthorized use; therefore it requires reliable and effective legal protection.

The intellectual property necessitates quite strong legal protection as the intellectual activity will mainly determine strategies and tactics of the country's social

and economic development as experienced by developed economies. The production of goods will not determine the economy, but science, culture and technology will become of top priority. In this regard, the concept of “culture” should be understood more broadly including education, amenity, sci-tech manufacturing level, literature, art and many other determining society civilization level aspects.

The cultural level defines the world-view, ideology, moral standards and other human values both of a society as such and of each individual separately. It is the culture that stipulates and creates the inner world of society and of each individual.

It should be noted that intellectual property legislation is neither stable nor uniform regulatory block; it is rather subjected to constant changes, with national and international law norms harmonization being a part of those alterations.

Within the context of Ukrainian integration into the European community, the development of the national intellectual property protection system is seen as a constituent of its international system protection. The approved National Strategy for the development of intellectual property in Ukraine till 2020¹ defines the general principles of the national intellectual property system priorities and prospects, e.g. goals, strategic directions and main tasks, the use and realization of which the state policy should pursue to undertake regarding the intellectual property sphere. However, there remained many unsolved issues left by its predecessor – the Concept of the Development of the State System of Intellectual Property Rights Protection of Ukraine for 2009-2014², which was approved by the decision of the State Department of Intellectual Property Board (Protocol, March 11, 2009, #11), aimed at identifying the ways to advanced development and improvement of the intellectual property protection state system. Its priorities are the most complete, timely and highly-qualified provision of individuals and legal entities with the internationally standardized intellectual property rights protection. Those standards presuppose the reliable warranties to legal protection of the intellectual property which is considered to be an essential attribute of the civilized state national sovereignty. Ukrainian legislation possesses the following legal basis: the provisions of the Constitution of Ukraine (Art. 41, 54), the Civil Code of Ukraine (Book IV “Intellectual Property”), Commercial, Criminal, Customs Codes of Ukraine, the Code of Ukraine on Administrative Offences.

In Ukraine there are special laws in the field of intellectual property. There was created the organizational structure that provides activities in the field of intellectual property: it was created and is operating now, there is a strong regulatory

¹ National Strategy for the development of intellectual property in Ukraine till 2020, <http://sips.gov.ua/ua/project-ip-strategy28082014>.

² The Concept of the Development of the State System of Intellectual Property Rights Protection of Ukraine for 2009-2014, http://sips.gov.ua/i_upload/file/konts9-14.doc.

legal framework that in general meets international norms and standards, there is an appropriate infrastructure, there were introduced the mechanisms of implementing the law.

However, despite the fact that the level of intellectual property rights protection has significantly increased, the coordination of law enforcement and regulatory authorities in the fight against piracy in the field of intellectual property, the system of patent information security, national system of training, retraining and advanced training of specialists in the field of intellectual property, it is too early to calm down.

The practice and mass infringement of intellectual property rights show that this system has vulnerabilities. They are well known to specialists and just only a reminder will not move any case from the place until compliance with the current legislation will become the norm for holders of property rights, their users and public officials. The deficit of them in Ukraine is evident, it was increased with the changes of political elites and their attempts to form a team of managers which do not meet their professional features, such as education, work experience, existing achievements, but just being a part of this political force.

The national strategy of Intellectual property of Ukraine for the period until 2020 envisages, firstly, improvement of legislation of Ukraine in the field of intellectual property taking into account the acquired experience, including other countries, as well as recent changes and current trends in the outlined area, for the purpose of creating of the most favorable, legal, organizational and economic conditions for businesses and individuals as to acquisition, implementation and protection of intellectual property; Secondly improving the protection of intellectual property rights (system and application), for the purpose of improving the efficiency of procedures aimed to prevent, identify and stop infringements of intellectual property rights and forms of penalties applicable to these offenses; strengthen the technical base and development of scientific and technological potential of interested ministries and departments; strengthening the role of intellectual property in all spheres of activities carried out on the territory of Ukraine; Thirdly, formation of legal culture of intellectual property among the population of Ukraine, including the use of modern telecommunication.

Strategy is the result of deep analysis of legislative activities and the factors that affect it. There must be analytical publication, on the basis of comprehensive analysis of the main trends and directions of development of the global community the part of which is Ukraine, of the Ukrainian society, in the area of state construction, economy, science and education.

Today it is necessary to stimulate investment initiatives in the field of intellectual property to create new initiatives, to support innovation, especially, to imple-

ment new and the best investment in education, training and science on the basis of using art, scientific achievements and new developments in the field of information and communication technologies.

For Ukraine it is a task to create an open and efficient economy that encourages innovation, rewards initiative and ensures high social standards. The government clearly declared its choice towards implementing an innovative model of structural reorganization and economic growth, strengthening of Ukraine as a high technological European state ready for advanced development and joining to the technologically advanced countries.

The strategy of innovative development of Ukrainian society today is the development of new scientific ideas, know-hows, grid-technologies. In this context, the development of intellectual sphere in Ukraine requires both improving the regulatory framework and improving mechanisms for state governance of intellectual property and the development of institutional framework. Today the questions of improving the mechanisms of acquisition of intellectual property rights protection, improving stimulation in the field of intellectual property and establishment of effective mechanisms to protection of intellectual property rights are also actual. It is necessary to work out effective methods of prevention, counteraction, investigation of crimes in the sphere of intellectual property, improvement of awareness and development of high culture of wide layers of population in the field of intellectual property. The achievement of the above said requires improving the level of education in the field of intellectual property, the expansion of international partnership, cooperation, collaboration in the field of intellectual property. The other important question is to provide a high level of intellectual security, to solve the problem of recycling of products, where the objects of intellectual property are implemented, as well as a financial and logistical support of innovative models of the development of the Ukrainian society. The other specific question is implementation of national monitoring and evaluation of the implementation of new ideas, developments, know-hows and grid-technologies. While developing a strategy of innovative development of the Ukrainian state it is also necessary to take into account the problems of globalization that require theoretical understanding of tendencies in the evolution of legal, cyber, psychological and economic sciences and especially the science of intellectual property rights.

The most actual questions in the context above mentioned are: establishment of the effective and efficient legal and institutional system of protection of intellectual property rights in Ukraine; expediency of implementation of the best experience in the Central and Eastern Europe in the field of intellectual property into the national legislation and its harmonization with European and international standards.

In the area of implementation of intellectual property rights there is a problem of new technologies and innovation based on inventions. In the world 75% of all economic benefits from the use of industrial inventions are provided with a little quantity (about 3-7%). And 25% of the effect falls on 93-97% of inventions. Effectiveness of this or that inventive activity can be defined only due to its implementation and proper economic benefits. The ratio of the number of the initiated developments till the number of developments, culminating in the process of implementation of their results into production, is about 100/30, i.e. only 30% of the developments are introduced into production. Unfortunately, today in Ukraine this percentage is even smaller. Therefore, it is clear that the state must act purposefully to support the development of inventiveness and widespread introduction of innovations in the production process.

The development of intellectual property in Ukraine can be influenced by government support of the inventiveness, appropriate level of funding, popularization of this direction, increased international cooperation in all spheres of intellectual activity. An important influence will also ensure the creation and implementation of appropriate educational program, improving the regulatory framework, decentralization of powers of the central government in the field of intellectual property, technology transfer.

But beyond that, we can offer a number of innovative methods which are distributed among the countries of the world. They also include business incubators. Business incubators are such organizations that under certain conditions and for some time can provide specially equipped working space and other property to small and medium businesses that start their activities, for the purpose of assistance in obtaining their financial independence. The major functions of business incubators are: to provide rooms for offices or workshops on a rental basis, at below-market prices and with flexible terms to obtain additional space on demand. There are also administrative and technical services, consulting/business planning for beginners and potential entrepreneurs. A wide range of other consulting services, technology transfer, proposals to conduct seminars is also possible. Innovative business incubators could become intermediaries between SMBs based on inventions and utility models and future investors and the state. As a result, it would accelerate the development of small businesses, create new workplaces, increase the revenue to the state budget as well.

The other, not less effective form of stimulation of inventiveness could be so called professorial privilege under which the patent rights to inventions made by the professors while conducting the research due to the budget, belong to the teachers or the researchers.

Another important stimulus to activate inventive activity may be advisory or consulting engineering. Despite the fact that it is relatively a new phenomenon for national entrepreneurs in the world practice this kind of engineering is widely used considering the development of new technologies and innovative solutions.

Engineering is a separated into an independent sphere complex of commercial services for training and support of the production process, services of construction and exploitation of industrial facilities. Engineering can be defined as a set of services provided on a commercial basis of technical and economic grounds for the creation of new enterprises, design and exploitation of production and non-production facilities, production of new products, improving enterprise management and so on.

Provision of a full set of services and supplies on the basis of the contract for engineering includes four separate types of engineering services, each of which may be a subject to a separate contract. Thus, engineering consulting is associated mainly with intellectual services for the purposes of designing of objects, development of construction plans and control over the work. Technological engineering allows providing a requester of the technology or the technologies necessary for industrial construction and its exploitation.

Advisory or consulting engineering includes preliminary feasibility studies and research related to the overall design; planning and preparation of drawings and cost estimates; preparation of preliminary sketches, design documentation, detailed drawings and specifications; planning and programming of financing; preparation of technical specifications for the tender and issue recommendations, evaluation of proposals for construction of facilities; control of construction, production of equipment, mounting, installation and start of equipment operation; issuing certificates of the quality of work as well.

There is always a smart engineering at each stage, because it is impossible to develop and implement modern technologies and innovations without drawings and plans. Advisory engineering can be considered separately from the whole complex of engineering services, when the organization assigns various stages of implementation technologies of various suppliers.

There are still important issues of the codification of legislation in the field of intellectual property for a common objective values for all objects of intellectual property.

To the existing problems in the sphere of the gaps in legislation and the intellectual property we also include the absence of the legislative developments re-

garding a contractual transfer of know-how, as defined in the Law of Ukraine “On State Regulation of Activities in the Sphere of Technology Transfer”³.

An agreement on the transfer of know-how has a certain similarity with the license agreement. But the essential difference is that the rights for the patented objects are transferred on the basis of license agreements, whereas know-how objectively can not be patented.

Innovative prospects of our country in the sphere of intellectual property will contribute to the recently adopted by the Verkhovna Rada of Ukraine the Law of Ukraine “On Scientific and Scientific-Technical Activity”⁴, which should become the key to the effective use of the government their intellectual potential. This Law creates an effective legal framework for the development of scientific and scientific-technical sphere and turns it into a driving force of innovative progress of Ukraine.

It should be noted that the law will also contribute to the democratization of academic life, more transparent allocation of funds and increase of the efficiency of activity of scientific institutions. While the benefits of this Law can be offset by the provisions of the Law of Ukraine “On State budget of Ukraine for 2016”. The recent entry into force significantly exacerbates the already difficult situation of the Ukrainian science, the law provides for a significant reduction in the funding of the NAS of Ukraine – to the amount of 2 billion UAH 54 million⁵. At the same time, the minimum total requirement for 2016 is almost 2 billion 780 million UAH. This significant underfunding of almost 20%, will have a negative impact on the activities of the scientific institutions and will lead to the inevitable coagulation of research in many priority areas, a significant reduction in the number of employees of academic institutions and the introduction of part-time employment.

Under such circumstances, the number of young researchers will be decreasing at a catastrophic rate in NASU. Borys PATON: “The Underfunding of the National Academy of Sciences of Ukraine will lead to the decreasing of research projects and the loss of scientific staff”⁶.

Ukrainian science as the sphere of creation of various objects of intellectual property, demands a speedy reform. Unfortunately the best researchers leave the

³ Law of Ukraine “On State Regulation of Activities in the Sphere of Technology Transfer” (Vidomosti Verkhovnoyi Rady Ukrainy (VVRU), 2006, № 45, p. 434), <http://zakon2.rada.gov.ua/laws/show/143-16>.

⁴ Law of Ukraine “On Scientific and Scientific – Technical Activity” (Vidomosti Verkhovnoyi Rady Ukrainy (VVRU), 2016, № 3, p. 25), <http://zakon2.rada.gov.ua/laws/show/848-19>.

⁵ Law of Ukraine “On the State Budget of Ukraine for 2016”, <http://zakon3.rada.gov.ua/laws/show/928-19>.

⁶ Borys PATON: “The Underfunding of the National Academy of Sciences of Ukraine will lead to the decreasing of research projects and the loss of scientific staff”, <http://www.golos.com.ua/article/263445>.

country, which is unacceptable for the prospects of the development of science and economy. The Law “On Scientific and Scientific-Technical Activities” includes the path of reforms in the scientific sphere. The fundamental principle is to decentralize the management of the science area, de-monopolize its financing sources and the European approaches.

This law allows starting the reform in the field of science and creation of intellectual property. A reform that will give hope to young scientists to realize themselves in Ukraine and for Ukraine, which would eliminate bureaucratic legacy of the Soviet system of science management in favor of a creative environment, to encourage inventions, reform, which will mark the beginning of fashion in Ukraine on science and scientists will turn from beggars to those who shape public opinion, the consequences of which will be felt in all spheres of life.

Given all the above, there is the need to further enhance of the legal culture to protect intellectual property rights, improve the overall level of training of qualified specialists on these issues. This requires a large amount of special theoretical knowledge and practical experience of improving the legislation, aimed at protecting the rights of intellectual property objects, creation of favorable conditions for the development of a civilized market for these objects.

Necessary government assistance promotes the protection of the intellectual property and requires the introduction of organizational and legal measures. For their implementation it is required the coordination of different public authorities, private institutions and public organizations, determination of further ways of development of the national system of legal protection of intellectual property in Ukraine. The economic revival of our country, focusing on the development of market relations, commitment to cooperation with the international community need to be clearly defined prospects of the development and improvement of social relations in this important area.

Improving the culture of social relations in the sphere of intellectual property will help to optimize the necessary conditions for creative intellectual work of engineers, inventors, scientists, for the development of a civilized market of their performance and commercialization of a wide range of different objects of intellectual property, effective and honest business. All this is necessary for the development of the national economy and the improvement of the welfare of citizens, ensuring national security of our country and raising the general cultural level of our citizens, which will considerably improve the preconditions for European integration in the near future.

Ukraińska własność intelektualna – innowacyjne horyzonty

Streszczenie. Artykuł dotyczy wzrostu znaczenia własności intelektualnej i potrzeby zapewnienia efektywnej i skutecznej jej ochrony prawnej. Harmonizacja norm prawa międzynarodowego stanowi część tych zmian. Przyjęta Narodowa Strategia rozwoju własności intelektualnej na Ukrainie do 2020 określa główne założenia i perspektywy systemu ochrony własności intelektualnej, np. cele, strategiczne kierunki i główne zadania, których wykorzystanie i wprowadzenie powinno zostać dokonane przez państwo w odniesieniu do sfery własności intelektualnej. Rozwój sfery intelektualnej na Ukrainie wymaga zarówno poprawy norm prawnych, jak również mechanizmów państwowego zarządzania własnością intelektualną oraz stworzenia odpowiednich ram instytucjonalnych. Obecnie nadal aktualne są pytania dotyczące poprawy mechanizmów ochrony praw nabycia własności intelektualnej, odpowiedniej regulacji własności intelektualnej i ustanowienia skutecznych mechanizmów prawnej ochrony własności intelektualnej.

Słowa kluczowe: własność intelektualna, Narodowa Strategia rozwoju własności intelektualnej do 2020 na Ukrainie

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