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CORRELATION BETWEEN INTELLECTUAL PROPERTY AND SCIENTIFIC ACTIVITY

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Abstract

Purpose: *The article is dedicated to the analysis of legal nature and peculiarities of optimal correlation between the notions of intellectual property and scientific activity. Nowadays intellectual property as institution goes through the period of establishment in Ukraine. As the Soviet system of civil law was based on recognition and regulation of authors' rights for the authors of scientific works, discoveries, inventions and innovation proposals as the ones having mainly relative, i.e. legally mandatory, but not absolute character. Getting started to define the notion of intellectual property and intellectual property right in the system of interaction with scientific activity, it is important to say that such notion as "intellectual property" still needs enhancement. Its imperfection is due to the fact that this kind of property implies being formed by intellectual efforts of the author of scientific work, but legally it is processed with the help of documents that guarantee property right.* **Methods.** *General scientific method, philosophical method, specially-legal method of scientific research, system analysis method.* **Results:** *It is important to emphasize that not every result of scientific or creative work can become the object of intellectual property right, but the one that corresponds with law. Any scientific work falls within the purview of law if it corresponds with law demands. Scientific and technical results obtain legal protection only in case of appropriate qualification established by specific agency of State administration and issuement of law-enforcement document being limited by the territory of Ukraine. Protection of rights on the territory of other countries is realized only on the basis of correspondent international conventions and treaties.* **Discussion:** *Advanced modern countries realized the meaning and importance of usage and proper protection of creative and scientific work results known as "intellectual property" in accordance with fast pace of social and industrial development long time ago. Legal nature and peculiarities of optimal correlation between the notions of intellectual property and scientific activity is an important topic for the future research.*

Keywords: civil law; intellectual property; intellectual property right; scientific activity.

1. Introduction

Ability to create deliberately and intentionally is a very important attribute of a person as a part of living world.

Creative work is defined as intentional intellectual activity of a person the result of which yields something completely new characterized by being unique and original for social history [1]. At the same time scientific activities are defined as intellectual creative activities aimed at collecting and implementing new knowledge in all scientific areas. The categories of "creative work" and "activity" are very similar, coinciding in some substantive aspects.

Advanced modern countries realized the meaning and importance of usage and proper protection of

creative and scientific work results known as "intellectual property" in accordance with fast pace of social and industrial development long time ago [2, 3].

2. Analysis of Recent Research and Publication

Nowadays intellectual property as institution goes through the period of establishment in Ukraine. As the Soviet system of civil law was based on recognition and regulation of authors' rights for the authors of scientific works, discoveries, inventions and innovation proposals as the ones having mainly relative, i.e. legally mandatory, but not absolute character [4].

General protection principles of public rights for creative work appear in article 41 of the Constitution, which implies that everyone has the right to own, use and manage their intellectual and creative activity results. People's freedom of literary, artistic, scientific and technical activities is guaranteed by Article 54 of the Constitution. Thus, the state guarantees its citizens protection of intellectual property, their authors' rights, moral and material interests which appear resulting from different kinds of intellectual activity. Furthermore, every citizen has the right to their intellectual and creative work results; nobody can use or spread them without their agreement except for situations established by law. At the same time the state facilitates scientific development, supports scientific connections between Ukraine and the world community.

Accordingly, in Soviet legislation the term "intellectual property" was not used. It was mentioned for the first time during the last years of USSR existence – in the USSR Law dated March 6, 1990 "On Property in the USSR".

Passage of the Law "On Property", which has a special section on "Intellectual Property Rights", has become the beginning of Ukrainian intellectual property law establishment. The Law of Ukraine "On the Protection of Rights to Plant Varieties" dated April 21, 1993 is the first special act in this area.

There is a number of special laws which make specific legal basis for scientific activity and intellectual property protection in Ukraine:

- "On Science and Scientific and Technology Activities" dated December 13, 1991;
- "On the Protection of Rights to Utility Models" dated December 15, 1993;
- "On Protection of Rights to Marks for Goods and Services" dated December 15, 1993;
- "On the Protection of Rights to Inventions and Utility Models" dated December 15, 1993;
- "On Livestock Breeding" dated December 15, 1993;
- "On Copyright and Related Rights" dated December 23, 1993;
- "On Scientific and Technical Information" dated December 23, 1993;
- "On the State Secret" dated January 21, 1994;
- "On Science, Scientific and Technical Investigation" dated February 10, 1995;
- "On Protection of Masswork Rights" dated November 5, 1997;
- "On Innovation Activity" dated July 4, 2002.

Book four of the Civil Code of Ukraine, which follows book three "Legal Ownership and Other Intangible Property Rights", is dedicated to intellectual property right. Thus, the authors of the Code intended to emphasize social and economic importance of intellectual property as subdiscipline of civil law.

3. Presentation of the main material

Getting started to define the notion of intellectual property and intellectual property right in the system of interaction with scientific activity, it is important to say that such notion as "intellectual property" still needs enhancement. Its imperfection is due to the fact that this kind of property implies being formed by intellectual efforts of the author of scientific work, but legally it is processed with the help of documents that guarantee property right. This being said, the latter becomes reality only due to its inclusion into stream of commerce with the help of the system of:

- collection, analysis, observation, measurement;
- registration of copyright to work, invention;
- registration of business transactions and material production processes;
- research, propaganda, implementation of scientific research results into production;
- organization of exhibitions, conferences, seminars, training courses [5].

Only under the above mentioned circumstances the object of creative and scientific activity becomes a specific kind of property.

4. Material and Methods of Research

Any intellectual activities by their character and content are creative, but not every result of scientific activity becomes the subject of intellectual property right. Namely, only the result of scientific activity which corresponds to the demands of intellectual property law is considered an object of intellectual property. For instance, preparation of scientific work is the result of creative process but it does not correspond to the patentability requirements, so cannot become the object of intellectual property [6]. Thus, only the results of scientific activity that have protection of the law of Ukraine can be considered intellectual property.

Taking into consideration the above mentioned information, the simplest definition of intellectual property and scientific activity notions correlation is as follows: intellectual property is the property (i.e. ownership) of such results of scientific activity which according to the law have legal protection [7].

5. Research results

In terms of division of intellectual property into kinds there are some contradictions. Thus, in accordance with international treaties (conventions) the results of intellectual activity are divided into two main groups:

1) literary and art property (includes literary and art works, works of related areas):

2) industrial property (includes all results of technology work).

In the Civil Code of Ukraine there is another approach. It implies that all results of creative and scientific activity are divided into three groups:

1) objects of literary and art property;

2) objects of industrial property:

3) means of identification of civil commerce, goods and services participants.

When researching scientific activity and intellectual property it is important to consider the fact that "intellectual property right" notion can be used in subjective and objective meanings, and it is frequently used, among other things in the Civil Code (e.g., part 2, article 418), to denominate the legal personality (person's legal capacity).

In subjective meaning (part 1, article 418 of the Civil Code) intellectual property right is defined as the right of a person to the results of scientific, intellectual, creative activity or another object of intellectual property right defined by this Code and other laws.

In objective meaning intellectual property right is aggregate of legal norms which regulate the relations appearing in the process of creation, legitimation, usage and protection of the result of scientific, intellectual and creative activity[8]. Should we specify some provisions of the mentioned legal definition, it can be as follows.

Intellectual property right in subjective meaning is person's right to own, use, manage and protect the result of scientific, intellectual, creative activity or another intellectual property right object defined by law from breach on the part of other subjects of right [9].

It is worth noting that now there are two main approaches to defining legal nature of scientific activity and intellectual property. In one of them the rights of the author of creative, scientific activity results are considered intellectual property right consequently qualifying them as kind of property right (even though it is very specific). In particular point 2 of article 13 of the Law "On Property" has direct reference to the fact that results of intellectual work are the objects of citizens' property rights. The second concept says that the rights of authors of creative work are defined as exclusionary rights which are not owner rights.

Although article 418 of the Civil Code, which has the definition of "intellectual property right" notion, does not characterize it as exclusionary right of person to the result of scientific, intellectual, creative activity or any other object of intellectual property right. At the same time article 419 of the Civil Code, which defines correlation between intellectual property right and property right, in fact presents them as the categories of the same level.

According to article 419 of the Civil Code intellectual property right and property right exist as separate legal categories, which is connected with the following differences between objects of intellectual property right and tangible objects of property right:

1) intellectual activity result can be acknowledged as the object of intellectual property right only in case of exact match with the demand of law;

2) intellectual property right existence, despite being absolute and exclusionary, is limited by specific term.

As intellectual property right and property right to item are independent legal categories, transaction of each of them is independent legal fact which leads to, changes, terminates independent legal relations. Therefore transaction of intellectual property right to object does not mean transaction of property right to item to which the object of creative, scientific activity is bound. For the same reason transaction of property right to tangible item does not mean simultaneous transaction of right to intellectual property right object[10]. For instance, purchase of ancient scientific manuscript does not imply automatic transaction of author's right to the person that made the purchase.

Subjects of intellectual property right are people who can have rights to ownership, usage, management and protection of rights to intellectual, creative, scientific activity.

There are two kinds of subjects of intellectual property right:

1) creator (scientist) of the intellectual property right object;

2) other people who have personal incorporeal and (or) substantive rights of intellectual property.

Creator (scientist) is a person whose intellectual, creative, scientific activity results are or can be treated as the objects of intellectual property right. In the law (article 421 of the Civil Code) range of subjects treated as creators is not defined or limited by specific demands to their age, health, capacity etc. In the mentioned norm of the Civil Code there is only a tentative list of people who compose any object of intellectual property right: author, artist, inventor etc. This implies that identical capacity of "creative process" subjects is characteristic of intellectual property right subjects. In other words, both adults and non adults can be creators (scientists) of any results of creative, scientific activity.

It is worth mentioning that "creative legal capacity" does not coincide with common civil capacity which according to common law becomes due after reaching 18 years of age. Intellectual property right subject can be a partially capable person, a person with limited capability or incapability. It is another matter that such person can realize their author's rights only with the help of other people (parents, foster parents, guardian, caregiver etc.).

Other people are considered intellectual property right subjects if according to the Civil Code, other law or treaty they possess personal non-property and (or) intellectual property rights. For instance, it can be a person, to whom author in accordance with the law assigned intellectual property rights fully or partially, publisher of scientific work who signed correspondent agreement with the author (article 427 of the Civil Code).

Under spectific circumstances subject of intellectual property right to object created due to performance of labour agreement can be legal entity or natural person where or for whom the creator of the object works. It is mentioned in article 429 of the Civil Code, which differentiates two cases:

1) definition of personal non-property right subjects;

2) definition of property right subjects.

As for personal non-property right there is a general rule which states that the right to the object created due to labour agreement performance belongs to the scientist who created it. At the same time in cases provided for by law specific personal intellectual non-property right to such object can belong to legal entity or natural person where or for whom the creator works.

In this regard it is important to state that authors' right traditionally means that in most cases scientific work created due to performance of duty assignment belongs to the employer who has employment relations with the employee. However, article 429 of the Civil Code gives more democratical solution of this issue generally giving preference to the interests of the employee who created intellectual property right object.

The same rules apply in case of defining the subject of personal intellectual non-property right to the object created on demand. Such right belongs to the creator of the object and only in cases provided for by law some personal intellectual non-property right to the object mentioned can belong to the order-giver (part I article 430 of the Civil Code).

Intellectual property right to the object created due to labour agreement performance belongs to both the scientist who created it and to legal entity or natural person where or for whom he works if other is not applicable. It is important to emphasize that this rule is facultative and is not applicable in case if other is not specified by the agreement between the creator of intellectual property object and the employer. The same rules apply when defining the subject of intellectual property right to the object

created on demand (part 2 articles 429 and 430 of the Civil Code).

Stockholm Convention on establishment of World Intellectual Property Organization (1967) considers as intellectual property right objects the following:

- literary, artistic and scientific works;
- performances of artists, recordings, radio and TV programmes;
- scientific discoveries;
- utility models;
- trademarks, service marks, commercial names and trade names.

Although the countries which joined the Convention are not obliged to reproduce this list in their laws and define intellectual property objects range themselves, lawmaking practices follow these recommendations. That is why in the Civil Code there is an almost complete list of intellectual property objects provided by Stockholm Convention.

Intellectual property right objects in Ukraine (article 420 of the Civil Code) include:

- literary, artistic and scientific works;
- computer software;
- data compilation (database);
- performance;
- audio tracks, video tracks, broadcasting programmes;
- scientific discoveris;
- inventions, utility models;
- design (topography) of integrated circuit;
- proposals for technical improvement;
- plant varieties, animal breed;
- commercial (trade) names, trademarks (goods and services marks), geographical names;
- commercial secrets.

It is important to emphasize that not every result of scientific or creative work can become the object of intellectual property right, but the one that corresponds with law. Any scientific work falls within the purview of law if it corresponds with law demands. Scientific and technical results obtain legal protection only in case of appropriate qualification established by specific agency of State administration and issuement of law-enforcement document being limited by the territory of Ukraine. Protection of rights on the territory of other countries is realized only on the basis of correspondent international conventions and treaties.

In accordance with the list of objects included into the Civil Code (article 420) there are different kinds of intellectual property right in Ukraine:

1) intellectual property right to literary, artistic, scientific and other works (copyright) (Ch. 36);
2) intellectual property right to performance, audio tracks, video tracks, broadcasting programmes (related rights) (Ch. 37);
3) intellectual property right to scientific discovery (Ch. 38);
4) intellectual property right to inventions, utility models (Ch. 39);
5) intellectual property right to design of integrated circuit (Ch. 40);
6) intellectual property right to proposals for technical improvement (Ch. 41);
7) intellectual property right to plant varieties, animal breed (Ch. 42);
8) intellectual property right to commercial names (Ch. 43);
9) intellectual property right to trademarks (Ch. 44);
10) intellectual property right to geographical names (Ch. 45);
11) intellectual property right to commercial secret (Ch.46).

Establishment of intellectual property right includes two situations:

1) accruer of intellectual property right;
2) acquisition of intellectual property right.

Depending on the situation we can distinguish primary (accruer) and secondary (acquisition) ways of establishment of intellectual property right.

6. Discussion Research results

Accruer of intellectual property right means establishment of intellectual property right for the first time, i.e. it didn't exist earlier, but after that correspondent legal relations appeared. In this case the grounds for accruer of civil rights and obligations is primary, they appear for the first time, including creation of works, inventions and other results of intellectual and creative activity which correspond to laws in force.

In case of acquisition of intellectual property right to scientific result it appears on the grounds of secondary character. In particular this right can be acquired as the result of obtaining legal succession documents, transaction of intellectual property right to another person by the author etc. (article 427 of the Civil Code). In such situation not only the act of

creation (legalized in specific cases in accordance with law) is the ground for accruer of appropriate legal relations, but also complicated legal body (creation of intellectual property right object and action - author's death and commencement of succession; creation of intellectual property right object and act aimed at its transaction etc.).

7. Conclusions

Now therefore, on the one hand it is important to emphasize consideration of the fact that the essence of intellectual property is its relation to intellectual, creative and scientific activity, on the other hand the importance of legitimization is indicated, i.e. the results of scientific activity become the object of legal regulation only when they are treated as such by law [11]. Intellectual property right is the right of creator, scientist (and other people provided for by law) for their obtained result of scientific, intellectual, creative activity which is treated as the object of legal regulation and protection. According to modern national concept in this sphere intellectual property right is considered a specific kind of property right, i.e. right to a specific object - scientific, intellectual and creative activity results.

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Шуст Н.Б.

Інтелектуальна власність, наукова діяльність: оптимальне співвідношення

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Мета: Стаття присвячена аналізу правової природи та особливостей оптимального співвідношення інтелектуальної власності та наукової діяльності. Насьогодні інтелектуальна власність як інститут фактично переживає період свого становлення в Україні. Оскільки радянська система цивільного

права базувалась на визнанні та регулюванні авторських прав авторів наукових творів, відкриттів, винаходів та раціоналізаторських пропозицій як таких, що мають головним чином відносний, а саме - зобов'язально-правовий, а не абсолютний характер. Розглядаючи концепцію інтелектуальної власності і права інтелектуальної власності в системі взаємодії з науковою діяльністю, слід зазначити, що як таке поняття "інтелектуальна власність" потребує наукового доопрацювання. А саме, недосконаліть його полягає у тому, що цей вид власності розуміється як такий, що формується інтелектуальними зусиллями автора наукового доробку, але оформляється юридично за допомогою документів, які гарантують майнові права. **Методи:** Загально-науковий метод, філософський метод, системний метод, спеціально-правовий метод. **Результати:** Необхідно підкреслити, що об'єктом права інтелектуальної власності є не кожен результат наукової, творчої діяльності, а лише той, який відповідає вимогам закону. Будь-який твір науки підпадає під охорону права, якщо він відповідає вимогам закону. Науково-технічним результатам правова охорона надається лише на підставі відповідної кваліфікації спеціальним державним органом управління і видачі правоохоронного документа та обмежується лише територією України. Захист прав на території інших держав здійснюється лише на підставі відповідних міжнародних конвенцій і договорів. **Обговорення:** Сучасні передові країни давно усвідомили значення та необхідність використання і належної охорони результатів творчої та наукової діяльності, що об'єднується у поняття "інтелектуальна власність", щодо прискорення темпів соціального та промислового розвитку. Правова природа і особливості оптимального співвідношення між поняттями інтелектуальної власності та наукової діяльності є важливою темою для майбутніх наукових досліджень.

Ключові слова: інтелектуальна власність; наукова діяльність; право інтелектуальної власності; цивільне право.

Н.Б.Шуст

Интеллектуальная собственность, научная деятельность: оптимальное соотношение

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Цель: Статья посвящена анализу правовой природы и особенностей оптимального соотношения интеллектуальной собственности и научной деятельности. Сегодня интеллектуальная собственность как института фактически переживает период становления в Украине. Поскольку советская система гражданского права базировалась на признании и регулировании авторских прав авторов научных работ, открытий, изобретений и рационализаторских предложений, как таких, что имеют главным образом относительный, а именно- обязательно-правовой, не абсолютный характер. Рассматривая концепцию интеллектуальной собственности и права интеллектуальной собственности в системе взаимодействия с научной деятельностью, следует отметить, что, как такое понятие «интеллектуальная собственность» нуждается в научной доработке. Несовершенство его состоит в том, что этот вид собственности понимается как такой, что формируется усилиями автора научных достижений, но оформляется юридически с использованием документов, которые гарантируют право собственности. **Методы**: обще- научный метод, философский метод, системный метод, специально-правовой метод. **Результати:** Следует подчеркнуть, что объектом права интеллектуальной собственности есть не каждый результат научной,творческой деятельности, а только тот, который отвечает требованиям закона. Любой результат науки подпадает под защиту права, если он отвечает требованиям закона. Научно-техническим результатам правовая защита надается только на основе соответствующей квалификации специальным государственным органом управления и выдача правоохранного документа ограничивается только территорией Украины.Защита прав на территории других государств осуществляется только на основе соответствующих международных конвенций и договоров. **Обсуждение**: Современные передовые государства давно осознали значение и

необходимость использования и необходимой защиты результатов творческой и научной деятельности, которая объединяется в понятие «интеллектуальная собственность» в отношении ускорения темпов социального и промышленного развития. Правовая природа и особенности оптимального соотношения между понятиями интеллектуальная собственность и научная деятельность есть важной темой для будущих научных исследований.

Ключевые слова: гражданское право; интеллектуальная собственность; научная деятельность; право интеллектуальной собственности.

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