ISSN 2308-0361

PROTECTION OF TRADE SECRETS IN INTERNATIONAL LEGAL DOCTRINES: STRATEGIES TO ACHIEVE EMPLOYEE LOYALTY

Hennadiy Androshchuk,
head of Laboratory for legal support for science and technology development of the Intellectual Property Research Institute of the NALS of Ukraine, PhD in economics, associate professor

Андрощук Г. Захист комерційної таємниці в зарубіжній правовій доктрині: стратегії забезпечення лояльності працівників.

Комерційна таємниця нерозривно пов'язана з поняттям конкуренції, тому що саме конкуренція є одним з найважливіших факторів ефективного розвитку ринкової економіки. Конкурентна боротьба неминуче припускає забезпечення збереження в таємниці відомостей, оволодіння якими сторонніми особами призведе до послаблення економічних позицій підприємства або завдання значної шкоди.

Законодавство, що регулює питання комерційної таємниці (в більшості країн ці правовідносини регулюються законодавством про захист від недобросовісної конкуренції), запобігає промисловому шпигунству (несанкціонованому доступу до такої інформації) завдяки тому, що воно передбачає притягнення до відповідальності осіб, винних в отриманні доступу до інформації незаконними способами.

Сьогодні окремі суперечливі норми, що регулюють питання, пов'язані з комерційною таємницею, містяться в різних нормативно-законодавчих актах. Спеціального закону про охорону комерційної таємниці в Україні й досі немає. Водночас, окремі спеціальні закони з охорони комерційної таємниці сьогодні діють в Молдові (1994 р.), Киргизстані (1998 р.), Туркменістані (2000 р.), Азербайджані (2001 р.), Росії (2004 р.), Таджикистані (2008 р.), Білорусі (2013 р.).

У сучасних умовах жорсткої конкуренції вирішальну роль в охороні інтелектуальної власності (ІВ) підприємства відіграють його працівники. Незважаючи на існування цілої низки юридичних і технічних механізмів охорони ІВ, одним з найскладніших завдань, яке доводиться вирішувати підприємствам в сфері охорони ІВ, є, як і раніше, забезпечення лояльності з боку працівників. Працівники — найбільша загроза. Відома статистика (дані Інтерполу), згідно з якою 25 % службовців фірми готові продати її секрети в будь-який час кому завгодно, 50 % йдуть на це залежно від обставин і лише 25 % є патріотами цього підприємства. У статті роз'яснюється необхідність включення до стратегії охорони комерційної таємниці підприємств такого ключового елемента, як висока лояльність з боку працівників. Розглянуто основні шляхи та способи забезпечення довіри і відданості з боку працівників, що запобігає несанкціонованому розголошенню ними комерційних секретів підприємства.

Щодо роботодавця працівник автоматично зобов'язаний зберігати конфіденційність. Однак в умовах високої мобільності робочої сили, «психологічні договори» виявляються ненадійними. Це означає, що офіційні юридично оформлені контракти набувають все більшого значення. Такі контракти або положення, що в них містяться, зміцнюють юридичну охорону комерційної таємниці і забезпечують підприємству безпеку у разі виникнення судового спору.

Статистичні дані свідчать, що майже 80 % працівників малих і середніх підприємств лояльні до своїх підприємств, тоді як у великих компаніях цей показник становить менше 50 %. Законодавство про охорону комерційної таємниці покликане забезпечити баланс між різними варіантами політики в галузі конкуренції. З одного боку,

необхідно заохочувати інновації і творчість та забезпечити охорону компаніям, що інвестують кошти в інноваційну і творчу діяльність. З іншого, необхідно заохочувати здорову конкуренцію і свободу зайнятості. Про складність таких різних і нерідко конфліктуючих політичних підходів свідчить застосування в країнах загального права «доктрини неминучого розкриття» і «доктрини трампліна».

Саме тому організаційні та адміністративні заходи захисту конфіденційної інформації необхідно поєднувати з соціально-психологічними. Серед соціально-психологічних заходів захисту можна виділити два основних напрямки: це, по-перше, правильний підбір і розстановка кадрів і, по-друге, використання матеріальних і моральних стимулів.

Західні фахівці з економічної безпеки вважають, що від правильного підбору, розстановки і стимулювання персоналу збереження фірмових секретів залежить, як мінімум, на 80 %!

Ключові слова: конкуренція, комерційна таємниця, конфіденційність, економічна безпека, лояльність працівників

Introduction. Trade secret is closely connected with the notion of competition, because competition is one of the most important factors of effective development of a market economy. Competition will inevitable involve the need to ensure confidentiality of information which, if becomes known to outside parties, may lead to the weakening of the economic position of the enterprise or cause it a substantial harm.

With the transition of our state towards the market economy, the new terms associated with the market economy terms have come into use in the Ukrainian legislation, such as «confidential information», «commercial secret», «bank secret» and «know-how». Whereas issues relating to protection of state secrets are thoroughly regulated by the Ukrainian legislation, the issues relating to commercial secrets and protection thereof are among the least developed in the Ukrainian economics and law science. In fact there is no any practical experience concerning application of provisions of the existing legislation relating to commercial secrets. Over the last 6 years the bodies of the Antimonopoly Committee of Ukraine have eradicated only 11 cases infringements specified in articles 16–19 (illegal collection, disclosure and use of commercial secrets) of the Law of Ukraine «On protection from unfair competition» [1]. And it is understandable, because the prevailing majority of such cases are of a latent (hidden) nature.

Presently there are assorted conflicting provisions which regulate issues concerning commercial secrets and which are contained in different regulatory and legal acts. Ukraine still does not have a single law dedicated to protection of commercial secrets. However, separate laws on protection of commercial secrets are currently in force in Moldova (1994), Kyrgyzstan (1998), Turkmenistan (2000), Azerbaijan (2001), the Russian Federation (2004), Tajikistan (2008), Belarus (2013) [2].

In the modern conditions of harsh competition, it is employees of an enterprise who play a decisive part in protecting its intellectual property (hereinafter — IP). Despite the availability of a series of legal and technical mechanisms of IP protection, one of the most challenging tasks that businesses face in the area of IP protection is (as it has been in the past) to ensure employee loyalty. In this paper we explain the need to include in the strategy of protection of commercial secrets of enterprises such a key element as high degree of loyalty of employees. Let's look at the principal ways and means of achieving trust and commitment on the part of employees and preventing, by doing that, the unauthorized disclosure of commercial secrets of the enterprise by its employees.

A saying «he who controls information controls the world» is very well suited for the entire concept of strategic use of commercial secrets. Using commercial secrets for strategic purposes, an enterprise often achieves a significant competitive edge on the market. Besides, owing to such secrets the enterprise may create a market niche that will be practically inaccessible for competitors. Frequently enough, enterprises attain competitive advantages because they do not disclose strategic information or maintain its confidentiality sufficiently long, since laws (of most countries) normally prohibit third parties to use or copy secrets or confidential information without its owner's permission. Legislation that regulates issues relating to commercial secrets (in most countries such legal relationships are regulated by laws on protection from unfair competition) prevents commercial espionage (unauthorized access to such information) by establishing responsibility of individuals gaining access to information by illegal means [3, 4, 5]. Commercial secret is not the only instrument for IP protection, and, if used properly, it will complement and step up efficiency of other means of protection. By successfully protecting their commercial secrets, enterprises also strengthen their other IP assets, for example, Coca-Cola Company by protecting its secret formula as a commercial secret also strengthens its trademark*.

Considering volatility of market conditions and taking into account that commercial secrets can be disclosed by third parties themselves, businesses are advised not only to protect already existing commercial secrets, but also work constantly on creating new know-how to maintain their competitiveness. Besides, it may also prove useful in the event of unforeseen disclosure of commercial secrets, because the enterprise will be able in such a case to switch to manufacturing a new and better product or to implementing a more effective business plan.

Definition of commercial secrets. To be regarded as commercial secret and, consequently, to qualify for legal protection, information must meet the following three principal requirements: 1) this information must be confidential or must be distributed on conditions of confidentiality; 2) the information must have commercially valuable due to its confidentiality; 3) under certain conditions, the owner of the information must apply necessary steps to maintain its confidentiality. A commercial secret may be any kind of information, including formulas, methods, models, financial data, business plans, client lists, undisclosed products, etc., which the enterprise deems valuable and which gives the enterprise an advantage over its competitors [3].

Positive and negative aspects of protection of commercial secrets. When making a decision on whether or not to apply the mechanism of protection of commercial secrets, one must consider advantages and drawbacks of such pro-

* There are well-known international examples where extensive and reliable protection of production secrets is ensured by developers themselves. Thus, the Coca-cola extract production secret is known only to two persons and has been kept undisclosed since 1886. This secret has been insured against commercial espionage in the amount of 43 million dollars. The secret of production of Cologne № 4711 in Germany has been under protection already for 190 years; it has been seventy years as the secret of composition of the world's best French perfume Chanel № 5, which includes over 100 different fragrance oils and essences; also protected are the secret tobacco mix of Marlboro cigarettes, the secret ingredients of French liqueurs Benedictine and Chartres. The same holds true for Pepsi cola. Back in 1903 the obscure pharmacist Braham from North Carolina (the USA) invented the dark-brown syrup that he dubbed Pepsi, which means energizing or invigorating. This syrup is currently used by 1300 PepsiCo plants located in all parts of the world. Its production secret is known only to 3 members of the board of directors of PepsiCo. Only they hold the keys to the safe where the recipe of this concentrate is kept; they can open the safe only together and they are not allowed to be together in one airplane, train or car — if anything happens to one of them, two others will stay alive. And just in case a copy of the safe key is held at the bank which finances the company [6].

tection relative to other methods of IP protection. The advantages of commercial secrets are as follows: 1) they entail no registration costs; 2) such protection is not limited in time; 3) protection of commercial secrets becomes effective immediately; 4) to establish such protection, the commercial secret does not have to disclosed or registered in a government agency. On the other hand, it has the following disadvantages: 1) if the secret is embodied in a product, third parties may themselves disclose the embodied in this product secret information and use it legitimately by way of «reverse engineering»; 2) if a commercial secret has been disclosure to the general public, no protection shall be granted; 3) protection shall be granted only from the illegal access, use or disclosure of confidential information; 4) protection of commercial secrets is weaker than patent protection; 5) commercial secret does not ensure protection from those who independently reaches an idea that is analogous to the one kept as secret. The result is that unpatented commercial secret could be patented by a person who independently develops it. In this respect a commercial secret is different from a patent on inventions which protects the owner of the patent from those who managed to independently develop an analogous technical solution. A law does not stipulate a punishment for a bona-fide disclosure, including such legitimate methods of discovery as: 1) independent creation; commercial secret does not involve exclusivity, therefore potentially anybody can discover your commercial secrets independently and use or patent them; 2) reverse engineering; this is a usual technique used to understand the mechanism of operation or component parts of a product and which means that a competitor examines the product with a view to reproducing it or even manufacturing a better product [3].

However, many analysts believe that protection of the results of intellectual activities in the regime of a commercial secret has a more promising perspective than patent protection. From the very beginning patents were meant to stimulate not making inventions commercial secrets. For instance, in [7] it is indicated that: «... in the hierarchy of methods of improving competitiveness of innovative businesses, patent protection for many companies comes only fifth after protection in the form of know-how, reducing the length of the period for implementation of the innovation, of production itself, selling accompanying goods or services».

It should be noted that the costs associated with obtaining a patent for an invention of medium complexity and enforcing this patent during the first three years (including patent attorney's fees) may amount to 3 000–4 000 euros in European countries, 7 500 euros in the USA, and 9 600 euros — in Japan. The cost of a European patent in eight countries is estimated at 40 000 euros. Patenting the inventions under the Patent Cooperation Treaty system involves additional, compared to the national patenting procedure, cost of 2 100 euros (3 800 euros if patent analysis is carried out) [8]. Besides, due to the high level of uncertainty in patent protection and also high costs of obtaining and enforcing a patent, judicial costs relating to judicial settlement of disputes in the area of patent law and their complexity, the «patent wars» make sense only as a last-ditch effort for a financially able claimant.

Legal protection under the commercial secret regime has a string advantages compared to other forms of legal protection. Such advantages include absence of a mandatory registration requirement at the patent office, indefinite term of protection, fast achievement of the status of protected result of intellectual activities, universality of objects of protection, no need to pay a duty or disclose the essence of the product subject to protection. Of course, these particular features of commercial secrets (know-how) make them a rather attractive instrument of legal protection of the re-

sults of intellectual activities for enterprises of any ownership form. However, working with a production secret has its difficulties relating to the uncertain mechanism for the accounting of know-how and additional costs which accompany this stage of working with it. On the one hand, under par. 4 of the Regulation on financial accounting «Accounting of intangible assets» (RFA 14/2007), «provided certain conditions are met ... intangible assets will include, for instance, scientific, literary and artistic creations; programs for computers, inventions; utility models ... production secrets (know-how); trade and service marks». This means that in theory financial accounting of know-how is possible [7].

Protection of commercial secrets. Due to the modern achievements in the area of communication technologies and the speed at which information can be copied and distributed, protection of commercial secrets requires continuous daily efforts. To achieve this, an enterprise must:

- identify all valuable commercial secrets and develop and implement a policy and program for protection of the commercial secrets;
- communicate to the employees the importance of protection of commercial secrets and explain the developed protection policy and program to them;
- make a balanced decision on which employees *«need to know or use»* the information, and periodically revise the list of such employees, and also restrict access to commercial secrets based on what exactly the employees *«need to know»* or *«need to use»*;
- install devices limiting physical and technical access to commercial secrets; • limit public access to the room where commercial secrets are kept and ensure control over such access;
- in order to prevent incidental or unintentional disclosure of information, mark *secret* or *confidential* all documents containing commercial secrets;
- sign confidentiality agreements with all relevant employees, as well as third persons who in one way or another may gain access to commercial secrets of the enterprise.

Employees are the major risk. There are sad Interpol statistics, according to which 25 % of companies personnel are prepared to sell their secrets to anybody and anytime, 50 % may do it depending on circumstances and only 25 % are true patriots of their enterprises [3].

Competitive advantages that an enterprise do badly needs can be ensured by new and more advanced products and processes which cannot be copied. An incessant quest for creative and innovative ideas is an all-time problem. Some enterprises even directly «steal» the employees form their competitors in order to exploit their creative and innovative capabilities, as well as their knowledge of secrets of successful activities of the competitor for their own advantage. In most cases confidential information is disclosed or used by the existing and particularly by former employees of the enterprise. When a person is working for an enterprise, it always has some «psychological accord» with the employer. Unlike an officially executed contract, such an accord is made up of a set of mutual expectations in respect of the employee's contribution to the operation of the enterprise, on the one hand, and of his reward for his contribution, on the other hand. Such expectations, as a rule, develop and become understood in the course of the work for the company. As employees integrate into the company's culture, they learn what exactly is acceptable and what is not, what their duties are and what they owe the company and what the company owes them. In respect of the employee an employee is required to maintain confidentiality automatically. However, under conditions of high level of freedom of employment, «psychological accords» turn unreliable. This means that officially executed legal contracts are gaining greater importance. Such contracts or

provisions contained therein strengthen the legal protection of commercial secrets and ensure enterprise's security if a judicial dispute arises. There exist several kinds of contract provisions which an enterprise may include in employment contracts with its employees with a view to ensuring protection of one's confidential information.

- Firstly, it is the provision on mutual nondisclosure obligations, where both parties agree not to disclose any confidential information subject to the contract. Such provisions should be included in contracts of any kind, be it a contract with full-time staff employees, interns, temporary hire, shareholders, clients, or anybody else who can gain access to the commercial secrets of the enterprise.
- Secondly, there is an equally important competition waiver clause, under which employees give up their rights to carry out similar activities or hold a similar job position with competitors of the employer and even to start up one's own business using for this purpose the information of the employer enterprise. A provision on competition waiver should include the following obligations: not to hold several jobs, not to compete with the employer, not to set up a competing company and not to entice one's colleagues to start working for a competing company. However, in certain countries it is not allowed to include such provisions, whereas in most other countries it is required that such limitations must be reasonable.

Such a provision exists, in particular, in German competition law. A similar article was included in the draft Law of Ukraine «On protection from unfair competition». However, in the course of the preparation of the draft law for the second reading this provision was not backed by the deputies, because, in their view, it was infringing on human rights. The result is that now in Ukraine it is rather common for former employees to start work for competitive entities, such as banks, insurance companies, etc. The author believes that it is time to revise this legislative provision in the light of the existing international expertise and national experience.

Confidentiality agreements: absence of full guarantee. The task of preserving commercial secrets is ever present due to the constant fear of their possible disclosure. As a rule, major risks are posed by employees themselves, since there are no guarantees that signing with them *«non-disclosure agreements»* and *«agreements on competition waiver»* will suffice to prevent use or unauthorized disclosure of confidential information by the employees who quit working for the company. In any case, the competition waiver clause does not ensure full guarantee here, because often it is subject to limitations regarding its duration and geographical coverage.

In the past two decades the world of business and work conditions have been through substantial changes. In the past, a hired employee used to be sure work for the company for the rest of his life, whereas the employer would expect from him full loyalty to the enterprise. Besides, employees in those times were committed to their employer. However, with the onset of «globalization», when employees began to be confronted with problems of restructuring, relocation of companies to other regions and their fragmentation, the attitude toward employee started changing sharply [9]. Employers have began to «infringe on the rules», mutual obligations stopped being observed and were revised, an employee was no longer expected to provide services and show commitment indefinitely, job hopping became usual as people constantly sought higher-pay jobs or better working conditions. Under modern conditions it is difficult to achieve loyalty and trust in the work place. According to the study of American labor market carried out in 2000 by human resource consul-

tants for the Fortune Company, employees' loyalty to their employers depended on the size of the enterprise. The statistics demonstrated that almost 80 per cent of employees of medium-sized enterprises were loyal to their enterprise, whereas in large companies this ratio is less than 50 per cent. The legislation protection of commercial secrets seeks to ensure a balance between different policy versions in the area of competition. On the one hand, it is necessary to encourage innovation and creativity and to ensure protection for the companies investing funds in innovation and creativity. On the other hand, it is necessary to encourage healthy competition and freedom of employment. Complexity of such different and often conflicting political approaches is reflected in the fact that common law countries apply the *«inevitable disclosure»* and *«springboard» doctrines.*

The «inevitable disclosure» doctrine emerged in connection with the need to resolve a problem of employees' migrating to other similar companies. The doctrine's major principle is that the employees who had access to confidential information would inevitably disclose this information to their future employers, provided the latter operate in the same area. What follows from this doctrine is that even if an employee has good intentions, he will automatically or instinctively pass the information, skills and knowledge acquired on his previous job to his next employer, id the latter carries out his activity in the same area. In this case the policy factors mentioned above come into play. On the other hand, the society needs to protect confidential information of its enterprises, although it may not restrict freedom of employment for its members. Judicial rulings passed in this area depend on facts and circumstances of each specific dispute. As a rule, an injunction on the employee's starting work for another company is issued if it is established that there is a high probability of the former employee's passing to his new employer the information that is not generally known or cannot be easily «deduced» by the competitors in the respective sector. One must distinguish between specific confidential information and the usual skills and knowledge acquired by an employee in the course of his work for the previous company. The employee may not be deprived of the right to use such acquired skills and knowledge.

A case *PepsiCo Inc. v Redmond* presents an example of application of this doctrine to prevent work of the employee for the competing company. PepsiCo Inc. sought to obtain an injunction for the employment of its former employee Redmond by the Quaker Oats company, which at the time was a direct competitor of PepsiCo Inc. PepsiCo Inc. won in this dispute because it was found that Redmond would inevitably disclose PepsiCo's commercial secrets and confidential information to his new employer given the nature of the job offered to him at the Quaker company. The court also ruled that Redmond may never disclose PepsiCo's commercial secrets.

The «springboard» doctrine is applied to prevent a former employee who had access to the former employer's confidential information from using such information in his own interests to achieve an unfair advantage over his former employer.

An example of the use of this doctrine is a case *Rodger Bullivant Ltd. v Ellis,* where a managing director went to work for the rival company and brought technical and commercial documents, trade secrets and information about clientele of the former employer. In this case of was beyond doubt that using this information the former employee would get an unfair advantage and therefore the court prohibited such use of the information.

The springboard doctrine may also be used even if relevant information has already entered the public domain, in order to ban the former employee, who acquired from his former employer specific production knowledge and technical

skills, to use these skills / knowledge to manufacture a competing product. This is because such knowledge would give a former employee an «unfair head start» in respect of those who have access to the published information.

It is not easy, however, to obtain a court injunction, because the issue of confidentiality is of a complex nature: it is difficult to clearly identify and delineate the knowledge that the employee already had at the time of his being hired by the company, and the knowledge that he acquired during his work for the company.

In the last several decades changes occurred in working conditions and, as a result, in the degree of employee loyalty, which made incompliance with the psychological accord more likely. Therefore, greater attention must be paid to the task of improving employee loyalty as a way of ensuring protection of commercial secrets. An employer will only benefit from this, because the taking of appropriate measures will improve productivity and, even more importantly, will tie employees to their jobs, reduce personnel turnover and, as a result of this, minimize the risk of disclosure of commercial secrets.

Raising the level of employee loyalty. In the opinion of foreign experts, probability rate of a leak of data constituting commercial secrets in connection with bribery, blackmail, hiring competition's personnel, planting of one's agents is 43 %; by obtaining information through communication with colleagues — 24 %. Therefore, the firm's personnel are, on the one hand, the most important resource for entrepreneurial activities, and, on the other hand — certain employees due to various circumstances may cause significant losses and even bankruptcy of the firm. Thus, in Western Europe and in the USA the loss of 20 % of confidential information usually leads to the firm's collapse within a month [3].

That is why organizational and administrative measures aiming to protect confidential information must be combined with socio-psychological measures. The socio-psychological measures of protection have two primary components: firstly, it is the proper selection and placement of personnel, and secondly — use of material and moral incentives. Western economic security experts believe that minimum 80 % of protection of company secrets depends on proper selection, placement and motivation of the personnel!

Companies such as «Southwest Airlines», «Toyota» and «Sysco», which seek to raise profits by caring of their employees, have come to realize that ensuring employee loyalty to the company's cause need be well integrated with its policy in the area of human resources and common business strategies. Loyalty on the part of employees is not less important than loyalty on the part of customers, because enterprises entrust their customers to their employees, and therefore it is important to collect, summarize and interpret information about employees to be able to have a clear understanding of their needs and expectations. Relationships between the employer and employees must be based on mutual respect and understanding, fair and just treatment of employees regardless of their job positions. An important step on the way to the higher employee loyalty to the enterprise's cause is communication. Expectations of management may differ from expectations of employees, and therefore it is necessary to clarify mutual expectations in order for the both parties to understand what exactly is needed, from whom and in what amount. Where managers enjoy their subordinate employee's respect and trust — it is good for the interests of the business. Therefore, organizing manager qualification improvement programs may help improve personnel management skills and facilitate problem solving in specific sectors. It is useful to maintain proper communications inside the company and it is important to listen to the employees' opinion, since in this case the latter may feel that

they are involved in the common cause and the enterprise may benefit from this in terms of improved management and inside problem solving. Organization of programs such as inside forums, where employees would be given an opportunity to freely express their views and recommendations, could facilitate creation of a favorable work atmosphere. Besides, listening to the employee's views, company managers could identify *«weak points»* and *«cells of dissatisfaction»* and take action to eliminate them.

In the culture where there is «little alienation from authorities», managers treat their subordinates with respect and do not mistreat them, employees are entrusted with implementation of important assignments, and responsibility is borne by both parties or by the manager alone, who often assumes it singlehandedly as a person responsible for management, and managers are often in touch with the employees after work. Such a more collegial culture and the democratic and decentralized atmosphere in the work place greatly encourage higher loyalty among employees and strengthen mutual trust by facilitating communication between managers and employees. Employers, in their relationships with employees, need to do their best to demonstrate their care of the latter. Besides, collegial environment and «little alienation from authorities» form a sort of a «family» atmosphere inducing a sense of involvement. This, in its turn, helps strengthen loyalty with respect to the enterprise. When developing a strategy for ensuring employee loyalty to the cause of the enterprise, it is important to make sure that every employee understands what his role in the company is and how he can contribute to achievement of the overall success, because this will strengthen his sense of involvement, self-respect and doing something meaningful, and will also step up his level of loyalty with respect to the company.

Also very important for employees are proper work compensation, bonuses and benefits. From the financial point of view, wages of employees must fairly reflect their work contribution. One of the methods of reconciling interests of the enterprise and interests of its employees is the application of the profit-sharing mechanism, under which employees are paid bonuses which depend on the company's profits. Ultimately, both employees and employer are working on their common objective of ensuring mutual benefits. For example, Procter and Gamble offers its employees a very attractive share of its profit, and many employees of the company own its share worth thousands dollars. This makes employees feel involved and gives them certain financial benefits.

Also important is to motivate employees by ways other than material, for instance, in the form of announcing gratitude, granting a leave, placing a photograph on the best employee board, making available for them training programs, etc. The world's largest private software developing company, SAS Institute Inc., has the personnel turnover rate of 4 per cent. This relatively low rate is achieved also due to such employee benefits as daytime childcare service for working mothers, organization of leisure and recreation activities, full health insurance coverage, as well as a 35-hour work week.

Controlling employees activities. Despite the importance of measures aiming to strengthen employee loyalty, employers should not forget of protection of commercial secrets. For this purpose they must constantly control activities of employees. However, in doing this employers must not step outside the established limitations and must always respect privacy of employees. At the same time, excessive control may undermine employee's trust, because they may feel that they are not trusted themselves.

Speaking to a resigning employee. As an employment contract expires, it is important for the employer to have a conversation with the resigning employ-

ee and remind him of the obligation of non-disclosure of commercial secrets to which the employee had access in the company, after termination of the employment, and of the consequences of incompliance. Such conversations may also be of value for the employer, who may find out about the plans of the former employee for the future, for instance, as to his intended place of employment. This information could let the employer more accurately evaluate the existing and potential risks of disclosure of his commercial secrets and identify his competitors.

Conclusion. As enterprises make a decision to keep certain information confidential, they must create a dependable system for protection of such information [10, 11]. Also enterprises should take measures to ensure psychological loyalty on the part of the employees to step up the effectiveness of the signed non-disclosure agreements and competition waivers and thus protect their commercial secrets. Therefore, enterprises are advised to fully integrate measures aimed to strengthen psychological loyalty of employees with their strategies in the field of IP protection and their general business strategies. ♦

Список використаних джерел / List of references

1. *Андрощук Г. О. Захист комерційної таємниці: методика розслідування злочинів / Г. О. Андрощук // Інтелектуальна власність. — 2008. — № 7. — С. 21–33, № 10. — С. 22–31, № 11. — С. 21–33.*

Androshchuk H. O. Zakhyst komertsiinoi taiemnytsi: metodyka rozsliduvannia zlochyniv [in]: Intelektualna vlasnist, 2008, № 7, S. 21–33; № 10, S. 22–31; № 11, S. 21–33.

2. *Андрощук Г. Институт коммерческой тайны в странах СНГ: правовой режим и защита // XVII Международная научно-практическая конференция «Актуальне проблемы интеллектуальной собственности», Львов, 21–25.02.2011 г. — С. 224–241.*

Androshchuk G. Institut kommercheskoy tainy v stranah SNG: pravovoi rezhym i zashchita, XVII Mezhdunarodnaia nauchno-prakticheskaia konferentsiia «Aktualnye problemy intellektualnoi sobstvennosti», Lvov, 21–25.02.2011, S. 224–241.

3. *Андрощук Г. А. Экономическая безопасность предприятия: защита коммерческой тайны : монография / Г. А. Андрощук, П. П. Крайнев. — К. : Ин Юре, 2000. — 400 с.*

Androshchuk H. A., Krainev P. P. Ekonomicheskaia bezopasnost predpriatia: zaschita kommercheskoi tainy, K. : In Yure, 2000, 400 s.

4. *Андрощук Г. О. Конкурентне право: захист від недобросовісної конкуренції : навч. посібник / Г. О. Андрощук. — 3-є вид. стереотипне. — К. : ЗАТ «Ін-т інтел. власн. і права», 2004. — 304 с.*

Androshchuk H. O. Konkurentne pravo: zakhyst vid nedobrosovisnoi konkurentsii, K. : ZAT «In-t intel. vlasn. i prava». 2004, 304 s.

5. *Андрощук Г. А. Правовое регулирование защиты коммерческой тайны за рубежом / Г. А. Андрощук, П. П. Крайнев // Экономическая безопасность, разведка и контрразведка — 2002. — № 1. — С. 18–45.*

Androshchuk H. A., Krainev P. P. Pravovoe regulirovanie zaschity kommercheskoi tainy za rubezhom [in]: Ekonomicheskaia bezopasnost, razvedka i kontrrazvedka, 2002, № 1, S. 18–45.

6. *Андрощук Г. Комерційна реалізація ноу-хау: зарубіжний досвід та вітчизняна практика / Г. Андрощук // Міжнародний форум «Трансфер технологій та інновацій», Київ, 20–21.11.2008. — С. 90–108.*
Androshchuk H. Komertsiina realizatsiia nou-khau: zarubizhnyi dosvid ta vitchyzniana praktyka, Mizhnarodnyi forum «Transfer tekhnolohii ta innovatsii», Kyiv, 20–21.11.2008, S. 90–108.
7. *Чайков М. Коллизии секрета производства (ноу-хау) / М. Чайков, А. Майкова. [Электронный ресурс]. — Режим доступа : http://www.avtonews.net/005/kollizii-sekreta-proizvodstva-nou-khau?page=0,1.*
Chaikov M., Maikova A. Kollizii sekreta proizvodstva (know-how), http://www.avtonews.net/005/kollizii-sekreta-proizvodstva-nou-khau?page=0,1.
8. *Андрощук Г. Зарубіжне патентування винаходів / Г. Андрощук // Теорія і практика інтелектуальної власності. — № 6. — 2011.*
Androshchuk H. Zarubizhne patentuvannia vynakhodiv [in]: Teoriia i praktyka intelektualnoi vlasnosti, № 6, 2011.
9. *Андрощук Г. Управление интеллектуальной собственностью при офшоринге: аспекты экономической безопасности / Г. Андрощук // Наука та інновації. — № 1. — 2011. — С. 48–66.*
Androshchuk H. Upravlenie itellektualnoi sobstvennostiu pri ofshoringe: aspekty ekonomycheskoi bezopasnosti [in]: Nauka ta innovatsii, № 1, 2011, S. 48–66.
10. *Марущак А. І. Правові основи захисту інформації з обмеженим доступом / А. І. Марущак. — К. : КНТ, 2007. — 208 с. .*
Marushchak A. I. Pravovi osnovy zakhystu informatsii z obmezhenym dostupom, K. : KNT, 2007, 208 s.
11. *Носік Ю. В. Право на комерційну таємницю в Україні : монографія / Ю. В. Носік. — К. : КНТ. — 2007. — 240 с.*
Nosik Yu. V. Pravo na komertsiinu taiemnytsiu v Ukraini, K. : KNT, 2007, 240 s.

Надійшла до редакції 31.05.2016 р.

Андрощук Г. Защита коммерческой тайны в зарубежной правовой доктрине: стратегии обеспечения лояльности работников. Исследуется роль коммерческой тайны в конкурентной борьбе. Разъясняется необходимость включения в стратегии охраны коммерческой тайны предприятий такого ключевого элемента, как высокая лояльность со стороны работников. Рассмотрены основные пути и способы обеспечения доверия и преданности со стороны работников, что предотвращает несанкционированный разглашению ними коммерческих секретов предприятия.

Ключевые слова: конкуренция, коммерческая тайна, конфиденциальность, экономическая безопасность, лояльность работников

Androshchuk H. Protection of trade secrets in international legal doctrines: strategies to achieve employee loyalty. The article investigates the role of trade secrets in the competition. It is explained the need to include into strategies for the protection of trade secrets of enterprises of such a key element, as the high loyalty of employees. The basic ways and means to ensure the credibility and dedication on the part of employees, which prevents unauthorized disclosure of these commercial secrets of the enterprise are considered.

Key words: competition, trade secret, privacy, economic security, employee loyalty