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RIGHTS TO THE RESULTS OF INTELLECTUAL ACTIVITIES (EXCLUSIVE RIGHTS): GENERAL CHARACTERISTICS AND LEGAL NATURE

The article investigates the development of the concept of rights to intellectual activities. Also this article analyzes predictors of qualifications and rights to the results of intellectual activity, as well as the feasibility of using the doctrine of rule-making and the term "intellectual property". One of the difficult issues in legal science is value and delimitation of the exclusive rights (rights to the results of intellectual activity, intellectual property rights) and proprietary rights (classical property rights) as well as the feasibility of using the concept of "intellectual property", "intellectual property". World jurisprudence and practice suggest different approaches legislators and the legal profession to address these issues. Saving and applying in the world legislation of the term "intellectual property" is a kind of tribute to the historic tradition of its existence, and in fact some compromise on political and constitutional confirmation of a slogan about the importance of intellectual property.
Gradually, the concept of exclusive rights to the results of intellectual activity is increasingly recognized by foreign legislators. Supporters of the concept of exclusive (intellectual) rights emphasize that it is impossible to identify the legal regime of material goods and intangible objects. Unlike property rights, exclusive rights limited in time and space, protected by special methods of protection, and closely linked to the personality of the creator. In legal literature there is the perception that the exclusive rights should be recognized as rights of a special kind (sui generis), which are beyond the classical division of civil rights in property, commitment and personal.

The creative human activity leads to its objective results – from the poem to the invention. In ancient times, the result of intellectual and creative activity began to evolve to the product. Being the result of passion, emotional perception, reasoning unexpected, creative outcome, being separated from the author, this activity begins a new life as a commodity circulation, living in an area where its price will be not a passionate fan's swoon, but a specific amount of money. Business activities replenished unique intangible something that is not in seeking the production (raw materials, equipment, transport, labor), trade and warehousing costs, bank employees and storage).

Extremely high economic utility of the product "revenges" the holder of the rights to the creative result with the quite high risk of losing control over the subject of exclusive rights and its illegal using by the third party. These risks legislator tries to reduce by special (and not always of private law) instruments for the protection of human intelligence results.

It should be noted that copyright and patent law arose, in fact, not in a private-sector (publishers turned to public authorities to provide

them special privileges that would prohibit republication works), and their further development is closely linked to the rights of the individual. However, later the law managed to make the right regulation of relations on the results of intellectual activity in the field of private (civil) law[1].

One of the difficult issues in legal science is to determine the nature and the legal nature of the rights to the results of intellectual activity, (exclusive rights), their difference from real rights, determine their place in the law, and the accuracy and appropriateness of the use of the concepts of "intellectual property" "intellectual property." World jurisprudence and practice suggest different approaches of legislators to address these issues.

In ancient times, through objective social and economic reasons humanity has not developed a system of doctrine of the right to intellectual activities (exclusive rights). Roman law did not know such a thing in the legislation, because in that time there was no regulatory framework of relations that would define the legal regime of intangible objects of intellectual activity. As a result of underdevelopment doctrine of non-material objects and exclusive rights society of the Middle Ages and the period of emergence of bourgeois relations applied the rules of Roman law of property rights as a legal fiction to protect intellectual-term results of operations.

According to Y. Gambarov, European law has developed a new category of incorporeal things protected objective law. It was a kind of fiction for things such objects of which had properties of things, but were equal to it. The category of incorporeal things were also scientific, artistic, industrial and other intangible benefits that receiving an objective form of expression, independence and received property value, they are subject to protection, similar in form to the protection of physical things[2].

Later, the category of "exclusive rights" also applied unequivocally called the various terms, including "intellectual property", "monopoly" and others. In the opinion of I. Tabashnikov, since positive law began to take care of this category of rights, it hovers the science horizon without appointment, easily moved from place to place, like a bird, which is seeking where it would be easier to go down[3].

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[1] Покровский, И.А. (1998). *Основные проблемы гражданского права*. Москва: Статут, 133.

[2] Гамбаров, Ю.С. (2003). *Гражданское право: общая часть*. Москва: Зерцало, 589.

[3] Шершеневич, Г.Ф. (1891). *Авторское право на литературные произведения*. Казань, 28.

A. Pilenko noted that underdeveloped legal thinking is often guided by the so-called law of constructive economy: the emergence of a new social and legal phenomenon is the desire to cram this phenomenon to the known legal categories. Historically, unfortunately, the copyright and patent law, were deemed to be of obligation, real or personal rights[1].

By the mid-nineteenth century was dominant in the world, so-called proprietary concept, the leading idea of which was that any human labor is property, intangible property (disembodied) objects as well. This theory comes from the natural law concept of ownership, identifying the author's right to the product of his spiritual creativity with the ownership of material things. The emergence of the concept of proprietary rights to the results of intellectual activity contributed to the ideas of the French philosophers (Voltaire, Diderot, Holbach P., C. Helvetia J.-J. Rousseau), the conquest of the French Revolution: freedom of the individual, contract, inviolability of private property[2].

The relevant socio-economic conditions, lack of theoretical developments concerning rights to intellectual activities (exclusive rights), the sanctity and inviolability of property rights, the legislators endeavor to take into account the interests of entrepreneurs, understanding of intellectual activity as a commodity, the presence of the developed mechanism of protection of proprietary rights, the inertia of human thought and practice served as the main objective and subjective reasons perceptions exclusive rights from the standpoint of ownership and protect the rights of creators of intellectual products using proprietary methods of legal protection.

Development of social and economic relations, the emergence of machine production, technological change, the emergence typographic devices and machines, and other means of copying of intellectual activity, intellectual division of labor (mental) and physical, need encouragement and incentives not only creative figures, but persons who serve them (merchants, publishers, booksellers, managers, etc.), served as the socio-economic and technical prerequisites for the legal protection of the legitimate interests of intellectual and creative activity under the influence of traditional property rights with advanced protection mechanism.

This preservation and use in the laws of many countries of the term "intellectual property" is a kind of tribute to the historic tradition of its existence, and some compromise on political and constitutional confirmation slogan about the importance of intellectual property.

[1] Пиленко, А.А. (2001). *Право изобретателя*. Москва: Статут, 667.

[2] Сергеев, А.П. (2001). *Право интеллектуальной собственности в РФ*: учебник. Москва: Проспект, 19.

It should be emphasized that the category of "intellectual property" describes only objects of legal relationships, not rights of their subjects. In this context "property" is not a subjective right, on the contrary, it relates to specific facilities of subjective rights[1].

As noted by I. Zenin formed for centuries psychological perception of the sacred and inviolable rights of property (property rights) contributed attempts of intellectuals to use similar tools to protect their rights of property. Supporters of proprietary concept tried to attach to the new legal institution sanctified by tradition proprietary protection scheme[2].

The similarity of certain features exclusive rights and property law turned legal and technical prerequisites borrowing (adopting) achievement of real rights in the classical system of ownership[3].

At the time, A. Pilenko noted that the prevalence of proprietary concepts (as well as the use of the terms "literary property", "artistic property", "industrial property", etc.) can be explained by the distrust of the bourgeoisie to any new monopoly, causing the association with the right privileges and seen as a relic of feudalism, which could lead to a return to the old rule of law[4].

Exploring the legal nature of inventions, G. Shershenevich observed that impulse of attributing rights to the inventions of property rights is an imaginary unity foundation of both institutions – work. If the work done in its tangible product, underlying of property rights, then work in the invention should result in ownership of its results. So convergence of property rights with the right to an invention caused by domestic legislation and the use of that property blends with membership. Although the similarity of these rights is their absolute right of property is associated with real protection, prescription, vindication of the right material object that is foreign (alien) to the right to due invention intangibility of the object[5].

A. Makowski, pointing to the causes of proprietary concepts, notes that at one time it was necessary to give this new right legal form, which would have left no doubt that the holder of the rights enjoyed full freedom to use it properly work or invention. Ownership, because of the philosophical concepts of the time, seemed most able to protect its holder.

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[1] Дмитриев, Г.К. (2004). *Международное частное право*. Москва: Проспект, 297.
[2] Суханов, Е.А. (2006). *Гражданское право*: учебник: в 4 т. Т. 2. Москва: Волтерс-Клувер, 450.
[3] Раевич, С.И. (1926). *Исключительные права. Право на товарные знаки*. Ленинград, 6.
[4] Пиленко, А.А. (2001). *Право изобретателя*. Москва: Статут, 97.
[5] Шершеневич, Г.Ф. (2003). *Курс торгового права* : в 4 т. Т. 2. Москва: Статут, 76.

This has led to the conclusion that the author when needed adequate protection, he should possess ownership of the work he created. At one time believed that this right is best to ensure ease of transfer of rights to an object from one person to another and at the same time protect the legitimate holder of the right of use of the facility by unauthorized persons in ter these properties are required to enter an intangible subject to economic exchange[1].

In the nineteenth century the concept of proprietary intellectual property and patent rights reflected in the legislation of France, Germany, Britain, the US and Russia. Copyright and patent laws in most European countries equated the rights of authors to creative achievements of property rights. In particular, French Patent Act 1791 contained provisions according to which "any new idea, the declaration and the implementation of which may be useful to society belongs to those who created it, and it would be the restriction of human rights if a new invention was not considered as the property of its creator."

Also, A. Pilenko notes that the author of this law Jean de Buflersa meant that patent law is holy, when he wrote that patent law is the property and therefore is holy. This refers to the fact that the intermediate element (property) was indifferent for Jean de Buflersa[2]. The US law in 1789 contained a provision stating that there is no property which belongs to the man more than the one that is the result of his own mental work[3]. The Anglo-American law traditionally discards copyright as a form of ownership as an opportunity of using economic (property) rights, ignoring the moral rights of creators.

Over time, the process of further historical development, science and technology there is an objective need to prove the doctrine of exclusive rights of intellectual activity. Later, with the development of human thought and social relations increasingly began to make themselves supporters of the theory of exclusive rights. At one time G. Shershenevich pointed to the need to distinguish between the "right things" and "the right of the things" copyrighted works and ownership of the manuscript picture. The scientist offered to upgrade traditions established in Roman law and keep up with the times. He argued that the exclusive rights occupy an independent special place along with real and binding rights[4].

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[1] Маковский, А.Л. (2008). Исключительные права и концепция части четвертой Гражданского кодекса. *Гражданское право современной России*, *7,* 103-141.

[2] Пиленко, А.А. (2001). *Право изобретателя*. Москва: Статут, 586.

[3] Тарасова, В.В. (1982). *Азбука авторского права*. Москва: Юрид. лит., 23.

[4] Шершеневич, Г.Ф. (1891). *Авторское право на литературные произведения*. Казань, 35.

However, it should be noted that gradually the concept of exclusive rights to the results of intellectual activity is increasingly recognized as foreign law. The majority of scientists, lawyers deny (deny) a proprietary approach to the results of intellectual and creative activity and, based on the theory and practice indicate the existence of an independent category of exclusive (intellectual) rights that are absolute, fixed-term, non-material nature, especially the emergence, maintenance, suspension and ways of protection.

K. Fleyshits noted that in the scientific literature something entitled "proprietary design 'rights to intangible objects never claimed the role and importance of design (concept). Imaginary proprietary design was "metaphorical decoration" new rights "prestige property". It was the kind of person using the belief that any legal institution, created by State shall protect private property. When a new institution is being creating, it is best to recognize the appropriate subjective right of ownership. Under this condition, the new law provided the maximum subjective "prestige". The property was not used as a "structure" (the concept of) self– rights, but rather as a slogan in struggle for some recognition for its legal system. When this goal was achieved, when appropriate institute received appropriate basis, the need for its proprietary design eliminated, it proved unfounded (weakness), but because of it gradually began to abandon[1].

Supporters of the concept of exclusive (intellectual) rights emphasize that it is impossible to identify the legal regime of material goods and intangible objects. Unlike proprietary rights in principle indefinite and does not undergo any geographical limitation, the rights of authors, artists, inventors, breeders and their successors are limited in time and space, the exclusive rights protected by special methods of protection, the right to creative result closely linked to the personality of its creator.

V. Dozortsev rightly argues that the term "intellectual property" is legally incorrect, could create a false picture of the spread of the results of intellectual activities and intangible objects simultaneously in the regime established by law for property rights (property rights). The use of the term "intellectual property" in the legal aspect in our time can lead to confusion, since ownership (property law) is not suitable for intangible results of intellectual activity.

The use of the term "property" can make a misconception about the content of the exclusive rights of way and force protection. Use of the

[1] Флейшиц, Е.А. (1941). Личные права в гражданском праве СССР и капиталистических стран. *Ученые труды ВИЮН., 6, 68-69.*

term "intellectual property" prevents a clear delineation of intangible results of intellectual activity that is the subject of exclusive rights, and its material carrier – object ownership. Intangible results of intellectual activity have the following features: simultaneous use of the facility unlimited number of persons, physical depreciation, territorial and temporal limitations and others. To perform functions on consolidation and protection of intellectual activity required a completely different legal mechanism. Exclusive (intellectual) rights is an independent legal category that is significantly different from the traditional property law (property rights) and do not fit into the traditional system of Roman law[1].

Supporting the said opinion, E. Sukhanov notes that the concept of "intellectual property" and there is no universally accepted definition of clear legislation and doctrine, there are even two conditional, because it does not apply to property rights concerns but by broadcasting and cable transmission, protection unfair competition, etc., that is not only of intellectual activity in the literal sense[2].

Legislator of Russian Federation, using the experience of foreign countries and scientific doctrine, supported the concept of exclusive rights, including: Austria, Denmark, Norway, Germany, Switzerland, Sweden, Japan, which have gradually abandoned the proprietary design rights to the results of intellectual activity. Part 4 of the Civil Code of Russian Federation cemented term "intellectual property rights", covering property, moral, and other rights. Under the Civil Code of Russian Federation the term "intellectual property" does not mean the right and most intellectual activities – protected objects of civil rights. Internationally, the legislation also traced qualification "intellectual property" is not as rights to "intellectual products", as well as facilities such rights, in fact these products. Thus, the term "intellectual property" is used only in the names of universal international treaties and conventions, names of international organizations.

Most designs of property law (classical property rights) does not apply to exclusive (intellectual) rights, rights to results of intellectual activity with its essential features. Thus, if the proprietary right of appropriation used to purchase things different legal ways to further use for their own benefit, at its discretion, usually for further immediate possession and use (extraction properties) acquired thing about it is the exclusive (intellectual) Human actual appropriation results of intellectual labor

[1] Дозорцев, В.А. (2003). *Интеллектуальные права: Понятие. Система. Задачи кодификации*. Москва: Статут, 37.

[2] Суханов, Е.А. (2008). О кодификации законодательства об «интеллектуальной собственности». *Гражданское право России – частное право*, 2, 143-150.

would preclude continued use of intellectual products directly holder, and society as a whole that would violate the private and public interests.

Making exclusive rights to the author, inventor, artist is the purpose of legal protection of intellectual activity mostly for later disposal of these rights other individuals on the basis of license agreements and contracts for the alienation of property rights. Rightsholders results of intellectual activities meet their personal and commercial interests through the use of intellectual products. So, as a result of the exercise of the power of using their exclusive rights over reproduction, distribution, making available to the public, perform copyright works, viewers, readers, listeners are able to enjoy literature, music, audiovisual and other works, to expand their intellectual outlook, receive aesthetic pleasure.

The actual appropriation in the traditional sense in the intellectual sphere does not exist, it is a short-term phenomenon aimed at long-term use of intellectual work of a third party. Holder, having moral and property interests is doomed to bring to the public (consumption) numerous public the results of their intellectual work. This, in particular, is the inadmissibility of spreading the concept of "ownership" in the relationship associated with exclusive rights in the intellectual sphere. You must accept the thesis of S. Babkin that the actual appropriation of works of art makes it impossible to profit from their play, which is economic absurd. The actual appropriation of inventions in most cases is impossible to use. If privatizing of inventions actually had place, patent law did not appeared[1].

Unlike traditional property rights (property rights), the exclusive right to the result of intellectual activity does not mean possession of intangible outcome. An exclusive rights can't have intangible results (idea formula solution, image, etc.). Unlike objects of property, intangible intellectual activities have physical spatial boundaries can be simultaneously use many individuals. Unlike proprietary rights to the exclusive rights does not apply prescriptive acquisition, debt collection, specification depreciation.

Exclusive rights are urgent in nature, while property rights are perpetual. "Exclusiveness" rights to the results of intellectual activity (intellectual property) is that an intelligent human uses exclusive rights on intangible objects. In addition, the legislation increases the "exclusivity" of these rights by providing for additional restrictions on the composition of subject and object, different from the classical restrictions in ownership.

[1] Бабкин, С.А. (2006). *Интеллектуальная собственность в Интернете*. Москва: Центр ЮрИнфоР, 72.

An important feature rights to the results of intellectual activity also is their absolute, because monopoly intangible objects is exclusive basis[1].

A. Pilenko concluded that the design of property rights can't be used for human inventor, especially protection of ownership in patent law does not exist; duration of patent rights is minimized; teaching about how to transfer ownership does not apply to exclusive rights; occupation is regulated under patent law quite differently than on real rights; the doctrine of prescription does not apply to patent law[2].

Consequently, the exclusive right to the results of intellectual activity different from property rights for actors, objectives, content and implementation of subjective rights and duties of their media specifics of their protection. We can conclude independent existence, inheritance rights, the categories of civil rights – rights to intellectual activities (exclusive, intellectual) rights. It should be remembered that any time there is always conditional, because philological approach to it is not justified.

Results of intellectual activities to which priority should form (copyright) protected based on the fact of creation. Because they are unique, they do not require examination and registration, they are given "fact finding" legal protection. Results of intellectual activities to which priority is content protected only if their special design, examination and registration, they have the "login" legal protection.

In the legal literature is the perception that the rights of authors, inventors, rightsholders of intellectual activity should be considered a special kind of rights that are not in the classical division of civil rights in rem, commitment and personal. At the time, the Belgian lawyer E. Pickard said that the right to intellectual activities are specific intellectual property rights, which differ significantly from ownership of the way, and proposed to recognize, along with other kinds of civil rights, a separate group rights – intellectual (spiritual) rights including: copyright, art, music rights, privileges for inventions, the right to factory models, trademarks and brand, the company[3].

O. Kochanowskaya said that different approaches to the interpretation of the essence of rights to intellectual activities also existed at the time of the Civil Code of Ukraine – both from the standpoint of exclusive rights and position of real rights. However, most scientists did not support the

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[1] Канторович, Я.А. (2009). *Основные идеи гражданского права*. Москва: Феникс, 360.

[2] Пиленко, А.А. (2001). *Право изобретателя*. Москва: Статут, 63.

[3] Шершеневич, Г.Ф. (1891). *Авторское право на литературные произведения*. Казань, 78.

proposal to use the legal regime of real rights (ownership) rights to the results of intellectual activity, due in particular to the need to bring the principles of legal protection of exclusive rights in accordance with the principles of civil law.

So the Civil Code of Ukraine treats this category of rights as a system of moral and proprietary rights of intellectual and creative activity. In addition, the Civil Code of Ukraine provides for the ratio of ownership and intellectual property rights, under which ownership of the thing and intellectual property rights are independent of each other, and the transfer of the facility to the intellectual property rights does not mean transfer of ownership thing, and vice versa[1].

You must agree with O. Kodynets, which states that an analysis of the current legislation of Ukraine and professional literature in the field of intellectual property gives rise to the conclusion doctrinal and normative concept of dominance in Ukraine interpreting the results of creative activity that includes: delineation of property rights and rights to the results of creativity; characterization of the latter as the exclusive rights; preservation legislatively use definitions "intellectual property" to identify the group of legal institutions that provide protection of intellectual activity[2].

[1] Кохановская, Е.В. (2011). К вопросу об общих положениях о праве интеллектуальной собственности в Гражданском кодексе Украины. *Альманах цивилистики: сб. статей*, 4, 230-231.

[2] Кодинец, А.А. (2011). Теоретические аспекты юридической природы прав на результаты, интеллектуальной, творческой деятельности и средства индивидуализации. *Альманах цивилистики: сб. статей*, 4, 250-253.