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FEATURES OF LEGAL PROTECTION OF INVENTION AND UTILITY MODEL IN UKRAINE AND IN ADVANCED COUNTRIES

The article discusses the features of service inventors under the law protection of their intellectual property. Comparative analysis of the provision of such services and the process of acquiring the legislative powers of the invention and utility model in Ukraine and in the advanced countries of the world are performed. Conditions of patentability of the invention and utility model in Ukraine and in the advanced countries as a new and suitable for industrial applications are analyzed.

Keywords: *invention, utility model, patent.*

Introduction

The strategy of providing services and protection of intellectual property is important for the protection and determine the correct choice of what that protect and select the appropriate method of protection. When patenting various objects - from pharmaceutical formulation to the methods and means of treatment – a large number of inventors have to choose – a patent for intention or for utility model. The paper analyzes the features of service inventors under the law protection of their intellectual property in Ukraine and some of the advanced countries of the world.

Basic part

According to the Law of Ukraine "On the Protection of Rights to Inventions and Utility Models" the object of an invention are a product and a process or method as well as novel use of a known product or process. The legal protection do not extend to such technology objects like a plant varieties and animal breeds, processes of the reproduction of plants and animals that are biological in its basis and do not belong to non-biological and microbiological processes, topographies of integrated circuits and results of art constructing [1].

A utility model is a statutory monopoly granted for a limited time in exchange for an inventor providing sufficient teaching of his or her invention to permit a person of ordinary skill in the relevant art to perform the invention. The rights conferred by utility model laws are very similar to those granted by patent laws, but are more suited to what might be considered as "incremental inventions". Terms such as "petty patent", "innovation patent", "minor patent", and "small patent" may also be considered to fall within the definition of "utility model". In Ukraine, utility models are patentable provided that they have the "world novelty" and if they are "industrial applicability" [2].

What is about the utility model of advanced countries? The famous professor John Richards thought that in a world where obtaining value for money has become even more important than in the past, it might be useful to look for alternatives to the traditional way of doing things. For some types of invention, use of a petty patent or utility model as a means of protection may be a useful alternative to patent protection in many countries. Obtaining protection this way is often much less expensive than proceeding through the traditional patent route and, as noted below, in several countries has an advantage in its own right. Such protection can be obtained either by direct filing or by use of the Patent Cooperation Treaty.1 In many cases, as noted in the tables at the end of this paper, protection may be obtained without the need for substantive examination and often a lower standard of inventiveness is required for valid protection than is the case for patents [3].

In Japan, the statute itself spelled out the difference in that to be patentable something had to be a "highly advanced creation of technical ideas", whereas for protection as a utility model all that is required is "creation of a technical idea utilizing natural laws". Thus, the determining factor as to whether something was capable of protection by a patent or rather than by a utility model was whether the idea was "highly advanced". The Japanese Patent Office therefore examined utility model applications looking for a measure of inventiveness, but a lower one than was required for patents [6]. This led to the possibility that if one failed to convince the examiner that a sufficient degree of inventiveness had been demonstrated to permit patent protection, the application might, in cases where the subject matter was appropriate, be converted into one for a utility model. This feature was copied in other systems where different degrees of inventiveness were required for patent and utility model protection. One of the raisons existence of the German Law, namely the fact that utility models did

not have to show technical advance, became moot with the adoption of the European Patent Convention in 1978 [4, 5].

In harmonizing its patent law with those of the rest of Europe, Germany gave up its requirement for technical advance. This harmonization also required Germany to give up a feature that was regarded as being important by many in the German profession and industry, namely the six-month grace period in respect of publications by an inventor. However, no European harmonization existed for utility models and Germany was therefore permitted to retain a grace period for this form of protection. The existence of this grace period gave utility model protection in Germany a new lease on life and lead to a broadening of the concept of what could be protected by utility models from articles having a defined shape or structure. Thus, today the only form of invention which is not protectable by a utility model in Germany is one that is a process or method. Even this limitation was cut back in 2005 when the German Supreme Court held that use claims, including second medical use claims, were permitted in utility model applications.

In Germany there are additional differences between a patent for intention or for utility model, namely the grace period and that for utility models prior to public use outside Germany does not constitute a bar to protection. Furthermore, in Germany procedures for enforcement of a patent for intention or for utility model differ. In the case of an infringement action, the defendant can plead that the utility model is invalid and the courts can in effect amend the scope of protection in the light of the art cited by the defendant. Countries where there is a lesser distinction between requirements for patent protection and for utility model protection have tended to result in few utility model applications being filed. It is however, noticeable from the statistics compiled by WIPO, that in all countries, utility models, unlike patents in most countries, are much more utilized by local residents than by foreigners. One reason for this is that costs for utility models tend to be less than those for patent applications. In many countries no substantive examination is carried out for utility model applications. Dispensing with examination seems to be an increasing trend, although Korea at one point abolished this requirement but has now re-introduced it. This lack of examination also has the potential advantage of accelerating the grant of an enforceable intellectual property right. One consequence of a lack of examination, however, is a feeling that protection should not be granted for the full term normally granted for patents and so utility model protection is generally for a shorter period than that granted for a normal patent. In many countries, but not for example, China, it is possible to convert a patent application into a utility model application at any time during pendency of the patent application. In France, failure to request examination of a patent application will automatically convert the application into one for a utility certificate. In general, it is not possible to secure protection for the same invention by both patent and utility model rights (Germany is an exception). Many countries, including Japan, Korea (if examination has not already been carried out), France and China require that a report on the novelty of the model must be carried out before an infringement action can proceed. In Germany, this is not obligatory but can be requested by the right holder or a third party. As noted above, however, in Germany issues of the valid scope of protection can be considered by the court hearing the infringement action.

There are differences between the patent for intention or for utility model. Firstly, the patentability of the patent for intention is an inventive step (non-obvious), and among the patentability, there is not the subject of invention. There is only the condition of novelty and industrial applicability condition. Secondly, for an invention patent is issued for 20 years and a utility model – 10 years. The next is that the application for an invention patent conducted a formal examination and it spend a lot of time for consuming qualifying examination (test conditions of patentability) and the application for utility model is made only formal examination. Because patent for utility model in Ukraine can be obtained quickly (3 - 5 months), and the patent – in terms of 12 - 20 months from the date of the request for substantive examination. Patent protects inventions and utility models in all areas of human activity, as well as industrial design – design or appearance of industrial products. Received a patent for invention or utility model, you get: in the first place – the commercial benefit. To obtain a patent the holder acquires exclusive rights to use its facilities as well as the right to authorize or prohibit the others from using an object protected by a patent. You can also documented consolidate its authorship, its primacy in a certain area. The invention differs from utility models only the presence of inventive step (non-obvious). If the result of intellectual activity has inventive step, and the applicant has applied for the issuance of a patent for an invention, the patent will be denied. However, according to the Article 18 it provides institute conversion application and the applicant, who has applied for a patent for the invention of dubious inventive step can until a decision to refuse to grant this application to convert an application for award patent a utility model [6].

Conclusions

In conclusion, the patent for intention or for utility are objects of the same law – the Law of Ukraine "On Protection of Rights to Inventions and Utility Models". The patent for intention or for utility model – are the result of human intellectual activity in a particular field of technology. In the old version of the law (until 2000) the difference between invention and utility model was higher. In Ukraine, the mechanism of legal protection of utility model is similar to the mechanism for the legal protection of the invention and it is just a patent, but it is simple, cheap and quick. This legal protection of utility models have a significant role for small business, which owns a strategic role in the development innovations according to marketing needs. The patent of invention and utility models are the product of intellectual property and its protection is one of the issues of the quality of public services. This provision of the right to possession of the property, and after that to protect this right by the law.

With regard to the comparison of regulation to protect the right under the intellectual property with other countries, such as France, Japan and Germany, the Ukraine should settle the claims and the differences between invention and utility model.

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4. Decision X-ZB 7/03 of October 5, 2005. Following changes to implement the EU’s Biotechnology Directive, however, biotechnology inventions cannot be protected by a utility model.

5. European Patent Convention 1978.

6. Japanese Utility Model Law Article 3(2) parallels Article 29(2) of the Patent Law.

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ОСОБЛИВОСТІ ПРАВОВОГО ЗАХИСТУ ВИНАХОДУ І КОРИСНОЇ МОДЕЛІ В УКРАЇНІ ТА В ПЕРЕДОВИХ КРАЇНАХ СВІТУ

У статті розглядаються особливості надання послуг винахідникам щодо захисту своєї інтелектуальної власності. Проведено порівняльний аналіз надання таких послуг і процесу придбання законодавчих повноважень для винаходу і корисної моделі в Україні і в передових країнах світу. Аналізуються умови патентоспроможності винаходу і корисної моделі в Україні і в передових країнах з погляду новизни та придатності для промислового застосування.

***Ключові слова*:** *винахід, корисна модель, патент.*

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ОСОБЕННОСТИ ПРАВОВОЙ ЗАЩИТЫ ИЗОБРЕТЕНИЯ И ПОЛЕЗНОЙ МОДЕЛИ В УКРАИНЕ И В ПЕРЕДОВЫХ СТРАНАХ МИРА

В статье рассматриваются особенности оказания услуг изобретателям по защите своей интеллектуальной собственности. Проведен сравнительный анализ предоставления таких услуг и процесса приобретения законодательных полномочий для изобретения и полезной модели в Украине и в передовых странах мира. Анализируются условия патентоспособности изобретения и полезной модели в Украине и в передовых странах с точки зрения новизны и пригодности для промышленного применения.

Ключевые слова: *изобретение, полезная модель, патент.*