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Articles

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Protection of Intellectual Property Rights in Economic Activity

Ochrona praw własności intelektualnej w działalności gospodarczej

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ABSTRACT

The article reveals, in addition to the issues of relations arising in the field of intellectual property in economic activity, the theoretical and legislative framework for intellectual property protection in Ukraine. It is determined that the state system of legal protection of intellectual property shows low efficiency in solving key problems and is unable to ensure the development of intellectual property as an important element of the innovative national economy of Ukraine. It is noted that due to the imperfect and inert system of public administration in the field of intellectual property legal protection, there is no significant progress in adapting the regulatory framework to modern conditions. Furthermore, it is shown that the global development of intellectual activity and intellectual property has revealed trends according to which these factors become a priority in the socio-economic development of any country, including Ukraine. It is emphasized that intellectual activity and its result, intellectual property, are in constant dynamics, and the adequacy of legal protection often does not keep pace with their development. It is indicated that Ukrainian legislation on intellectual property was created after gaining independence, since before that Ukraine did not have its own legislation on intellectual property. It is shown that this section of Ukrainian legislation is in constant dynamics – the legislator is constantly looking for ways and means to bring it in line with international standards, since the level of socio-economic development of Ukraine and, ultimately, the welfare of the people depend on proper legal protection of intellectual property.

Keywords: intellectual property; legislation; property rights

INTRODUCTION

Although the legislation of Ukraine on intellectual property is developed taking into account the requirements of international conventions in this area, meets their principles and is adapted to the requirements of a market economy, it poorly fulfills its protective and preventive function. The reasons for this are the shadow economy, blind copying of borrowed experience, unwillingness to defend their subjective rights and legitimate interests, legal obstacles, etc. The growing number of violations has led to confrontation with intellectual property rights holders, creative organizations, venture and show business entities, states. This is manifested in economic wars, sanctions, the reduction of cooperation programs, the size of investments, and so on. Counterfeits violate the legal rights and interests of owners, hinder the development of intellectual potential, undermine the authority of the country, stimulate his loss.

This legislation, unlike most European legislation, is based on an integration basis, but without a proper consolidating basis and theoretical core. Problems that have arisen in the practice of its application have forced society to find a solution. It can be at the level of strategy and consistently carried out tactically in the development and adoption of regulations in the field of intellectual property. Analysis of the latter shows that tactical decisions and the priority of the law, rather than the law, dominate for the most part, which causes its instability. This approach

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contradicts the requirements of the Constitution of Ukraine and requires changes and their theoretical justification. Thus, the global problem that must be solved is to ensure the protection of the rights of subjects of intellectual property rights in the cycle of realization of creative freedom and ensuring the realization of property rights in a market economy.

Ownership based on the right of possession, which seems to be an ideal legal mechanism for the introduction of tangible objects into civil circulation, given a number of features (focus on the settlement of relations on tangible objects, the predominance of private law regulation of relations on its subject projects), was unable to fully ensure the free use of the result of intellectual activity in civil circulation.

RESEARCH AND RESULTS

The theoretical basis of the thesis was the work of scientists in the field of theory of law, civil law and intellectual property law: G. Androschuk, M. Boguslavsky, O. Dzery, V. Drobiazko, R. Drob, V. Zharova, Yu.O. Zaika, V. Lutsya, O. Pidoprygory, I. Spasibo-Fateeva, E. Kharitonova, R. Shyshka, G. Shershenevich, and others.

The purpose of the article is to reveal the theoretical and legal principles of intellectual property, to consider the legal status of subjects and their rights to intellectual property, and to analyze the problematic issues of legal protection and protection of intellectual property rights.

Questions are asked for solution. Civil law forms of protection of intellectual property rights, in particular personal non-property and property rights, also need more in-depth research; realization of personal non-property and property rights of intellectual property subjects.

The system of protection of intellectual property rights under the current legislation of Ukraine also requires scientific and theoretical analysis. Analyzing the problems of lawmaking in the system of intellectual property protection based on the results of research on the problems of legal protection of personal non-property and property rights, the legal regime of intellectual property and the legal status of intellectual property, we can identify shortcomings and gaps in the civil protection of personal property and property rights of intellectual property, give them an appropriate assessment, identify their causes and develop appropriate proposals and recommendations aimed at eliminating the identified shortcomings and increase the civil protection of intellectual property.[1]

[1] A. Neugodnikov, T. Barsukova, R. Kharytonov, *Protection of Intellectual Property Rights in Ukraine in the Light of European Integration Processes*, "Journal of Politics and Law" 2020, vol. 13(3), pp. 203–211; A. Aksyutina, O. Nestertsova-Sobakar, V. Tropin, *Intelektualna vlasnist*, Dnipro 2018.

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In the 19th century, at the beginning of the international system of intellectual property protection, in literary and inventive activity the decisive role was played by single authors, such as Jules Verne or Thomas Edison. That is, intellectual property was personified. It is the need to protect the rights of authors that became the political and ideological basis for concluding the first agreements on the protection of intellectual property rights. Later, in the 20th century, the situation changed a lot. Scientific achievements and technical inventions are mostly the result of purposeful activities of a group of people who carry out their intellectual activity at the request of a particular employer, using strong financial and material support. As a result of such circumstances, the main producers of intellectual property today are large international corporations. Such corporations have a great influence on the economy of individual countries or whole groups of countries, so they have the opportunity to actively lobby for their rights at the legislative level.[2]

At the beginning of the 20th century, the coal, metallurgy and automobile industries developed at the fastest pace, and it was in these industries that many technical inventions were made and introduced. Nowadays, the most actively created objects of intellectual property of the company, which operate in the field of software development, pharmacology, entertainment business, etc. Based on intellectual property rights, industrial companies have often made conflicting demands to protect their rights. On the one hand, they demanded access to the markets of other countries, and on the other, they demanded to close the markets of their countries to the import of similar products from other countries. On the contrary, some branches of human activity are developing more actively under conditions of freer movement of goods and services. This is the case, e.g., with the production of computers. The result of this interest is the creation of free trade zones. This circumstance was one of the factors that contributed to the creation of the European Union and the conclusion of the North American Free Trade Agreement. In addition, this approach contributed to the transformation of the International General Agreement on Tariffs and Trade (GUTT – General Agreement on Tariffs and Trade, 1947) into the World Trade Organization (WTO, 1995).

The WTO was established in 1995 to improve international economic relations, which were not regulated by the GUTT. In particular, the GUTT did not provide for the regulation of issues related to the sale of services and the purchase of intellectual property. In addition, the GUTT did not provide for coercive mechanisms capable of enforcing the provisions of the agreement. Interstate negotiations between stakeholders have been difficult and have gone down in history as the Uruguay

[2] R.J. Coombe, A. Herman, *Culture Wars on the Net: Intellectual Property and Corporate Propriety in Digital Environments*, [in:] *Intellectual Property*, ed. W.T. Gallagher, London 2017, pp. 579–607; C.M. Cynthia, *Sovereignty under Siege: Corporate Challenges to Domestic Intellectual Property Decisions*, "Berkeley Technology Law Journal" 2015, vol. 30, pp. 213–304.

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Round of international negotiations. This round began in 1986 and ended in 1994 with the signing of the Final Act establishing the WTO. One of the components of the Final Act was the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).[3] This agreement stipulates that each WTO member country shares the requirements of international agreements on intellectual property, ensures in its territory a level of protection not less than that required by existing international agreements and ensures the application of effective enforcement mechanisms.

Modern activities in the field of intellectual property are regulated by interstate and national legislation. The basic concepts of intellectual property in the international sense are defined by the provisions of international law on intellectual property issues, which began to take shape on the basis of interstate agreements concluded in the 19th century.

The first international document, the provisions of which outlined the concept of "intellectual property", was signed by eleven countries in 1883, the Paris Convention for the Protection of Industrial Property.[4] In 1993, the Paris Convention included 108 countries, including Ukraine.

To continue the process of development of copyright protection in the world, in 1886 ten states signed the Berne Convention for the Protection of Literary and Artistic Works.[5] The preamble to the Berne Convention states its purpose – to protect the rights of authors to their literary and artistic works as effectively and as equally as possible. The Berne Convention sets out clear criteria for granting such legal protection. More than 100 countries are now parties to the Convention.

In the time since the signing of the first intergovernmental agreements, the concepts of "intellectual property" and "intellectual property rights" have been constantly clarified, respectively, the provisions of the above conventions have been repeatedly revised. Such repeated revision is due to the development of public relations in the field of copyright – it is an objective and natural process of improving the international protection of intellectual property rights.

In order to further improve and develop this process, another agreement was signed in Geneva on 6 September 1952 – the Universal Copyright Convention. The provisions of the Geneva Convention are based on the legal principles of copyright protection, which is a logical continuation of the principles laid down by the Paris and Berne Conventions. Thus, the concepts set out in this document do not differ fundamentally from those previously approved and, due to differences in certain

[3] K.Y. Peter, *The Objectives and Principles of the TRIPS Agreement*, [in:] B.C. Mercurio, *The Regulation of Services and Intellectual Property*, London 2017, pp. 255–322.

[4] Paris Convention for the Protection of Industrial Property of 20 March 1883, http://zakon3.rada.gov.ua/laws/show/995_123 (access: 10.10.2024).

[5] Berne Convention for the Protection of Literary and Artistic Works of 24 July 1971, http://zakon3.rada.gov.ua/laws/show/995_051 (access: 10.10.2024).

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provisions, more thoroughly take into account the socio-economic and political changes that have occurred in the world.

The provisions of all the above conventions were amended by their parties concluding additional agreements on specific issues. Intellectual property law in the objective sense is a set of legal norms that regulate social relations in the field of creation, use and protection of the results of intellectual and creative activity. The right of intellectual property in the subjective sense is the right of the subject to possession, use and disposal of the result of intellectual, creative activity belonging to him in accordance with the law.

The two main approaches to the concept of "intellectual property" were either to fully accept and approve its legislative enshrinement or to deny the existence of a sound scientific explanation and proposals to use it not in legal norms but in political acts. In the second case, it was rightly pointed out that it is impossible to equate the legal regime of tangible things and intangible objects, which are different kinds of copyrighted works and various technical innovations, with territorial, temporal and spatial restrictions on the rights of authors and inventors; with completely different ways of protecting copyright and patent rights than those used to protect property rights. In addition, the acquisition of rights to certain objects of intellectual property rights is possible only with the receipt of special security documents.[6]

Proponents of the theory of intellectual property rights as property rights or quasi-property based their views mainly on the argument that intellectual property is a special kind of property, and the objects of intellectual property rights are called incorporeal things.

Meanwhile, the term "intellectual property" is conditional and a kind of tribute to historical tradition, so now there is no reason to allow the extension of these rights of the legal regime applicable to things, property. Different approaches to understanding the essence of protection of intellectual property rights existed at the time of the adoption of the current Central Committee of Ukraine – both from the standpoint of exclusive rights and from the standpoint of property rights. Meanwhile, most scholars did not support the proposal to apply the institution of property rights to intellectual property relations, given, in particular, the need to bring the principles of legal protection in line with existing continental law. As a result, the Central Committee of Ukraine establishes a unified approach to the protection of intellectual property rights through the institution of exclusive rights and uniform for all intellectual property rights methods of protection of civil rights and interests.

In Ukraine, the legislator enshrines the concept of intellectual property rights through the understanding of it as personal non-property and property rights of

[6] J. Hughes, *The Philosophy of Intellectual Property*, "Georgetown Law Journal" 1988, vol. 77, pp. 287–366; H. Howe, J. Griffiths (eds.), *Concepts of Property in Intellectual Property Law*, Cambridge 2013.

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intellectual property. The content of these rights is determined by the Civil Code of Ukraine and other laws on certain objects of intellectual property rights. Essential for understanding the specifics of the regulation of relations in the field of intellectual property rights is emphasized in the Central Committee of Ukraine, namely in Article 419, the ratio of the categories "intellectual property rights" and "property rights". In this case, the intellectual property right and the right of ownership of the thing do not depend on each other, and the transfer of the right to the object of intellectual property rights does not mean the transfer of ownership of the thing, and vice versa.[7]

In summary, it can be noted that the right of intellectual property in the objective sense is characterized by the following main features: 1) it is the right to the result of intellectual creativity; 2) the object of intellectual property rights is an intangible thing, and the result of intellectual, creative activity can be embodied in any material medium; 3) this result is suitable for reproduction and perception by others and for multiple reproduction (replication); 4) legal protection is provided to the result of intellectual creative activity either on condition of its creation and acquisition of a form suitable for perception by other persons (e.g. works of science, literature, art), or on condition of its compliance with current legislation of Ukraine on intellectual property (e.g. inventions, utility models, industrial designs); 5) legal protection of intellectual property is provided for a certain period specified by applicable law; 6) the intellectual property right to an object should be distinguished from the ownership of the material medium in which the creative result is embodied, and the ownership of the thing in which the intellectual property result is embodied does not depend on the intellectual property right to this result; 7) personal intangible rights of subjects of intellectual property rights are inseparable from the person of their creator and are not subject to alienation; 8) property rights of the subject of intellectual property may be alienated in any civil law manner, and the subject of these rights may waive them; 9) objects of intellectual property rights are recognized by the current legislation as goods and may be the object of any civil law transactions.

Civil law regulation of relations related to creative activity is carried out with the help of the norms of the Book of the Fourth Central Committee of Ukraine and a number of norms of special laws of Ukraine. The advantage of the current Central Committee of Ukraine is that the Code sets out general provisions that apply to all objects of intellectual property rights. This allows to unambiguously define the terminology, adhere to the basic principles of protection of new objects of intellectual property rights, establishes common approaches to the protection of various objects of intellectual property rights. Special laws on various objects of

[7] A.S. Kyrychuk, O.A. Slobodyska, *Pravova pryroda intelektualnoi vlasnosti u konteksti tsyvilnykh pravovidnosyn*, "Porivnialno-Analitychne Pravo" 2019, vol. 1, pp. 108–110.

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intellectual property rights, in turn, provide rapid and effective modernization and harmonization of Ukrainian legislation on intellectual property.

Thus, the Central Committee of Ukraine does not replace special legislation in the field of intellectual property – it includes mostly general rules, norms-principles, it does not contain detailed legal regulations in the field of intellectual property. This is explained by the fact that, firstly, the subject of civil law does not cover the whole complex of relations in this area, as there are also other substantive and procedural relations, which are regulated by administrative, criminal, etc., law; secondly, the legislation in the field of intellectual property law is constantly changing as a result of the emergence of new objects that acquire legal protection as a result of harmonization of international law and national law.

The latter approach has developed in the theory of intellectual rights, which has already been mentioned above and which proposes to recognize the authors and inventors of *sui generis* rights, i.e. rights of a special kind that go beyond the classical division of civil rights. H.F. Shershenevych, covering in his textbook the provisions on exclusive rights, noted: "Just a special kind of property rights (…). This view can not be acceptable".[8] The author believed that to disseminate the concept of property rights, which do not have the object of things, seems theoretically inconvenient – it may create an undesirable confusion of ideas in theory and in practice, e.g. between the artist's copyright in a painting and the right to own it by the person who bought it, between the right to a literary work and the right to a copy of a book. The legislator uses the collective concept of intellectual property. Thus, in jurisprudence there are two main approaches to the concept under consideration. Some scholars approve of the enshrinement of this concept in law and do not see the use of the term "intellectual property" by the legislator of any elements of the non-scientific approach. According to other scholars, this term is inaccurate and unscientific from the very beginning, so it can be used only in political acts, but not in legal norms that have a practical orientation. This dispute did not arise today and has its roots in the late 19th century.

In modern conditions in the legal plane, the versatility of certain methods and principles of legal regulation and ensuring a balance of private and public interests is one of the main tasks of law at the present stage. The field of intellectual property in this aspect is extremely relevant, as its inherent creative activity is characterized by the integration of private and public interests. And, as is well known, the method of civil law regulation covers not only dispositive but also imperative means of influencing the participants in civil relations on the basis of legal equality of the parties, justice and good faith. It should be noted that the heterogeneous composition of the subject matter of intellectual property rights determines the imperative and dispositive principles of its method.

[8] H.F. Shershenevych, *Obshchaia teoryia prava*, Moscow 1912.

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Analyzing the state of intellectual property law science on the issue of the correlation between the subject matter and the method, it is evidenced by their interconnectedness and interdependence, and therefore the law of intellectual property uses all kinds of techniques and methods existing in methods and techniques that are common to other branches of law.

Today, the cause of most infringements of intellectual property rights is economic in nature and lies in the monopoly of this right. Only the monopolist – the right holder – has absolute rights to a particular object of intellectual property, has the right to use such an object, has the opportunity to monopolize inflated prices not only for the object of intellectual property but also for the goods in which such object is embodied. Infringers of intellectual property rights, selling counterfeit goods, try to make more profit as a result of dumping pricing policy. Thus, by reducing the price of counterfeit products and increasing production volumes, they can receive additional income, while rights holders do not have such an opportunity. That is why measures of civil, administrative and criminal liability can not have positive consequences without taking into account the operation of economic laws. Therefore, intellectual property can act not only as an engine but also as a brake on social development. Proof of this is the fact that intellectual property, ranging from food, medicine, technology, technology and the Internet affects the development of society. And intellectual property rights essentially only provide a decentralized system of innovation in science and culture. Therefore, the legislation in the field of intellectual property should be comprehensive to regulate the regime of a particular object of intellectual property.[9]

Legislation in the field of intellectual property is complex, as regulating the regime of a particular object of intellectual property, it often includes the provisions of civil, financial, administrative, constitutional, procedural law, etc. And intellectual property law in general and each of its objects in particular have a certain connection with other branches of law, have a certain mutual influence on each other.

Despite active research on intellectual property rights in recent years, many issues have not yet been adequately studied. In particular, the role and importance of intellectual activity and intellectual property in the socio-economic development of Ukraine remain insufficiently defined; the relevance, content, types and place of intellectual property in the system of civil law of Ukraine are not sufficiently defined; composition of objects and subjects of intellectual property rights under the current legislation of Ukraine, which are subject to civil protection.

[9] R.A. Posner, *Intellectual Property: The Law and Economics Approach*, "Journal of Economic Perspectives" 2005, vol. 19(2), pp. 57–73; H.M. Schwartz, *Global Secular Stagnation and the Rise of Intellectual Property Monopoly*, "Review of International Political Economy" 2022, vol. 29(5), pp. 1448–1476.

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The issue of lawmaking in the field of optimizing the intellectual development of the country, improving the management of the intellectual property system requires constant attention from the state.[10]

In the context of the above, it is appropriate to consider the main basic or priority areas of lawmaking in the field of intellectual property of the country.

The first direction is the need to improve the regulatory framework of intellectual property and improve mechanisms for protection of rights in this area. The need for law-making in this area is related to the need to reform the management of intellectual property, caused by the need to adapt national legislation to the legislation of the European Union.

In this context, the legislation on intellectual property must be brought into line with the Civil Code of Ukraine, including in accordance with established international standards in the field of intellectual property.

It is also necessary to strengthen the legislative responsibility for infringement of intellectual property rights, improve the legal regulation of economic aspects of intellectual property rights, including the system of payment of fees and duties for actions related to the protection of intellectual property rights, improve the legal regulation of economic incentives, creativity, etc.

The second direction is to improve the procedures for protecting the rights of authors and owners of exclusive intellectual property rights. Legislation in this direction requires ensuring effective state control and coordination of actions of law enforcement and regulatory agencies to combat infringements of intellectual property rights.

European experience and improvement of judicial reform requires the creation of a specialized patent court to hear cases related to the protection of intellectual property rights, as well as the introduction of alternative dispute resolution, the development of a common method of conducting forensic examinations in cases of invalidation of intellectual property, development of methods for determining damages in cases of infringement of intellectual property rights.

The third direction is law-making in the field of protection and protection of copyright and related rights. It is necessary to improve the current legislation in the field of copyright and related rights in terms of promoting legal business in order to de-shadow this market for services, as well as legalization of software used in executive bodies and introduction of open access to the State Registers of Registered Copyright Objects via the Internet.

[10] A.S. Kolisnyk, *Suchasni problemy zakhystu prav intelektualnoi vlasnosti (na osnovi sudovoi praktyky)*, "Naukovyi Visnyk Uzhhorodskoho Natsionalnoho Universytetu. Seriia: Pravo" 2023, vol. 78(1), pp. 192–197; Yu.L. Boshytskyi, *Deiaki orhanizatsiino-pravovi aspekty udoskonalennia pravovoi okhorony in- telektualnoi vlasnosti v suchasnii Ukraini*, "Chasopys Kyivskoho Universytetu Prava" 2020, vol. 3, pp. 239–247.

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The fourth direction is personnel problems. Today, the need to train specialists in intellectual property and dissemination of knowledge, level of culture and education in this area remains extremely important.

It should be noted that the state and society understand the importance of training specialists in the field of intellectual property, but at the time of preparation of this article, many Ukrainian higher education institutions do not have intellectual property disciplines adapted for the relevant specialties, which would facilitate the acquisition of knowledge not only at the level of specialized master's programs in intellectual property (law, management), but also in other specialties, including at the bachelor's level.

Since 2001, a course on the basics of intellectual property has been taught in all higher education institutions in accordance with the Order of the Ministry of Education and Science of Ukraine No. 811 of 20 October 2004 "On Introduction of the Intellectual Property Discipline in Higher Education Institutions". However, the Order of the Ministry of Education and Science of Ukraine of 4 March 2015 No. 235 canceled the Order No. 811. As a result, the teaching of intellectual property knowledge has effectively ceased or has been reduced to teaching within other disciplines as a separate module. Currently, only a few higher education institutions have retained intellectual property courses for teaching at different faculties (in particular, law and economics faculties, some of them have copyright courses conducted at the faculties of philology and journalism, etc.).

According to the Resolution of the Cabinet of Ministers of Ukraine No. 266 of 29 April 2016, the training of intellectual property specialists was removed from specific categories, and its transfer was determined to the field of knowledge "Management and Administration" (07), specialty – management (073), and specialty – entrepreneurship, trade and entrepreneurship, trade and exchange activities (076); in the field of knowledge "Law" (08), specialty – law (081).

After that, the number of higher education institutions that used to provide training in intellectual property (specific categories) has sharply decreased dramatically. Special education in the field is a prerequisite for admission to certification, in particular, as an intellectual property representative (patent attorney; Clause 4 of the Regulation on "Representatives in Patent Attorneys", approved by Order of the Ministry of Economy of Ukraine No. 20599 of 29 December 2023).

We believe it is advisable to change the current state of affairs at the legislative level and introduce a state standard for the training of such specialists.

The specifics of lawmaking in the field of intellectual property should be based on the established legal culture of all segments of the population. An important role in this area belongs to modern telecommunications, which could provide public information campaigns to explain the negative consequences of misuse of intellectual property rights.[11]

[11] B. Sherman, L. Bently, *The Making of Modern Intellectual Property Law*, Cambridge 1999.

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Particular attention should to be paid to training of scientific personnel in the field of intellectual property, introduction of various forms and methods of retraining and advanced training of various social categories – patent attorneys, heads of enterprises, institutions and organizations, government officials, local governments. We also consider it advisable to involve specialists with knowledge of foreign languages in the field of intellectual property management, which should prevent many misunderstandings between participants in the intellectual property management process.

The fifth direction is the implementation of international policy to enhance the international image of Ukraine and its impact on international processes in the field of intellectual property. Lawmaking in this area will make sense in defending national interests in the framework of participation in the governing bodies of the World Intellectual Property Organization, participation in international projects aimed at the development of small and medium enterprises in the field of intellectual property.[12]

An analysis of the implementation of national legislation in the field of intellectual property, taking into account international experience, should be extremely important. This will allow Ukraine to determine the feasibility of joining them, as well as to defend national interests in the mutual protection of geographical indications in the creation of a free trade zone, taking into account the needs of domestic producers and business representatives.

Summarizing the above, we can draw the following conclusions about the optimization of law enforcement in the field of intellectual property. Along with the above five areas of development, improvement and adoption of relevant legislation, it should be emphasized that need to study and clear legal regulation of the relationship between well-known brands and domain names of different levels, geographical indications, signs of the former USSR, the need to make well-known brands well-known trademarks at the national, regional and international levels and provide for the issuance of national and international certificates for a well-known trademark.

The Civil Code of Ukraine does not contain a definition of the "concept of invention". In our opinion, such a definition should be contained in the Civil Code of Ukraine, which defines the basics of civil law of the country and the basics of intellectual property rights to inventions. Despite the fact that Ukraine has a system of protection of intellectual property rights that meets international standards, it is necessary to address the legislative level of approximation to EU legislation in the field of intellectual property protection, namely: prevention of infringements of

[12] S. Bannerman, *The World Intellectual Property Organization and the Sustainable Development Agenda*, "Futures" 2020, vol. 122.

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indirect use of inventions, licensing, cross-licensing, the introduction of tax benefits not only for inventors but also for entrepreneurs who will use the invention.[13]

The improvement of intellectual property law-making should be comprehensive and consistent, based on the relevant special national program, which is not subject to the fleeting interests of certain political and commercial forces, but to the interests of society as a whole. Optimization of law-making in the field of intellectual property in Ukraine will effectively promote the development of scientific and intellectual potential of the Ukrainian nation, economic breakthrough in the global economic crisis, access to the production of high innovative technologies and become economically developed countries.

Thus, improving the legislation in the field of intellectual property, eliminating certain gaps in the law will help prevent crime in general, strengthen the economic sphere of influence in international cooperation, will allow Ukraine to develop more confidently in the field of innovation. In our opinion, the above factors will contribute to strengthening not only the legal protection of intellectual property, the development of market relations, but also, to a large extent, the prosperity of Ukraine.

CONCLUSIONS

According to the Civil Code of Ukraine (Article 418), intellectual property rights are interpreted as "the right of a person to the result of intellectual, creative activity or other object of intellectual property rights, defined by this Code and other law". This definition contains mainly a legal approach to the interpretation of the content of intellectual property, which is associated with the rights to the results of creative, intellectual activity of human being. This approach is followed by a number of domestic and foreign scientists.

Intellectual property can act not only as an engine, but also as a brake on social development. Proof of this is the fact that intellectual property, ranging from food, medicine, technology, technology and the Internet affects the development of society. And intellectual property rights essentially only provide a decentralized system of innovation in science and culture. Therefore, the legislation in the field of intellectual property should be comprehensive to regulate the regime of a particular object of intellectual property. For this purpose, as a rule, the provisions of civil, financial, administrative, constitutional, procedural legislation, etc., are applied. In turn, intellectual property law in general and each of its objects in particular have one or another connection with different branches of law, exerting a certain mutual influence on each other.

[13] A. Neugodnikov, T. Barsukova, R. Kharytonov, *op. cit.*, pp. 203–211.

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The peculiarity of the legislation in the field of intellectual property is that it must comply with international treaties, based on a two-tier approach to the regulation of relations in the field of intellectual property, the freedom of which is guaranteed by the Constitution of Ukraine.

The improvement of intellectual property law-making should be comprehensive and consistent, based on the relevant special national program, which is not subject to the fleeting interests of certain political and commercial forces, but to the interests of society as a whole. Optimization of law-making in the field of intellectual property in Ukraine will effectively promote the development of scientific and intellectual potential of the Ukrainian nation, economic breakthrough in the global economic crisis, access to the production of high innovative technologies and become economically developed countries.

The legal status of intellectual property subjects is provided for in the Constitution of Ukraine, the Civil Code of Ukraine and in the legislation of intellectual property. According to Article 421 of the Civil Code of Ukraine, the subjects of intellectual property rights are the creator (creators) of the object of intellectual property rights (author, performer, inventor, etc.) and other persons who own personal non-property or property intellectual property rights.

The need to protect intellectual property rights is due to the following needs: ensuring the interests of creators by granting them time-limited rights to control the use of their own works; stimulating creative intellectual work, encouraging creative activity and implementing its results in the interests of socio-economic progress of society; intensification of investment and innovation activities, introduction of scientific and technological progress and innovations in all spheres of public life; creation of a civilized market environment, reliable protection of business entities from unfair competition associated with the misuse of intellectual property; protection of economic security of states in the context of globalization of world economic development, creation of favorable conditions for the transfer of new technologies; dissemination of information, avoidance of losses due to duplication of efforts aimed at finding ways to solve urgent scientific, technological and socio-economic problems; protection of society's interests in free access to the world's intellectual treasury.

In Ukraine, increasing attention to the protection of intellectual property rights is associated with gaining independence. Legal relations in the field of intellectual property are regulated by certain provisions of the Constitution of Ukraine, the Civil, Commercial, Customs and Criminal Codes, the Code of Ukraine on Administrative Offenses, procedural codes and special laws. In addition, Ukraine is a party to many international agreements in the field of intellectual property.

A single system of intellectual property protection should, of course, provide for a single system of sanctions for infringement of intellectual property rights. At the same time, stricter sanctions for intellectual property infringement should

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be developed. Technical means of reproduction, use and distribution of the latter's facilities enable agile "entrepreneurs" to freely use these facilities without the owner's permission and without paying him due remuneration. These factors require stricter protection of intellectual property rights.

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ABSTRAKT

W artykule przedstawiono, obok problematyki relacji powstających w obszarze własności intelektualnej w działalności gospodarczej, teoretyczne i legislacyjne ramy ochrony własności intelektualnej w Ukrainie. Stwierdzono, że państwowy system prawnej ochrony własności intelektualnej wykazuje niską skuteczność w rozwiązywaniu podstawowych problemów oraz jest niezdolny do zapewnienia rozwoju własności intelektualnej jako ważnego elementu innowacyjnej gospodarki narodowej Ukrainy. Zauważono, że ze względu na niedoskonały i bezwładny system administracji publicznej w dziedzinie prawnej ochrony własności intelektualnej brak jest istotnego postępu w dostosowaniu ram prawnych do współczesnych warunków. Ponadto zaznaczono, że rozwój działalności intelektualnej i własności intelektualnej na świecie wykazuje trendy, według których czynniki te stają się priorytetowe dla społeczno-gospodarczego rozwoju każdego państwa, w tym Ukrainy. Podkreślono, że działalność intelektualna i jej wynik – własność intelektualna – pozostają w ciągłej dynamice, a adekwatność ochrony prawnej często nie dotrzymuje kroku rozwojowi własności intelektualnej. Wskazano, że prawo ukraińskie dotyczące własności przemysłowej zostało utworzone po uzyskaniu niepodległości, ponieważ wcześniej Ukraina nie miała własnego prawa ochrony własności intelektualnej. Wykazano, że ten dział prawa ukraińskiego stale się zmienia – ustawodawca ciągle poszukuje sposobów i środków, aby było ono zgodne z międzynarodowymi standardami, ponieważ poziom społeczno-gospodarczy rozwoju Ukrainy oraz dobrobyt jej ludności zależą od właściwej ochrony prawnej własności intelektualnej.

Słowa kluczowe: własność intelektualna; ustawodawstwo; prawa majątkowe