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LEGISLATIVE REGULATION OF COMMERCIAL USE OF INTELLECTUAL PROPERTY OBJECTS IN BUSINESS ACTIVITIES

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The article analyzes current issues of the modern process of legislative regulation of the commercial use of intellectual property objects in entrepreneurial activity. Specific proposals regarding strategic directions for further improvement of the organizational and legal foundations of the process of commercial use of intellectual property objects in entrepreneurial activity are proposed, which should be focused on solving the following three blocks of current problems: problems of the legislative, institutional and infrastructural basis of the commercial use of objects intellectual property in business activities. Attention is focused on the need to systematize Ukrainian legislation on legal responsibility for infringement of rights to intellectual property objects used in business activities, adaptation of current domestic normative legal acts in the field of intellectual property to the relevant acts of the European Union, legislative regulation of the issue of disposal of objects intellectual property used in business activities, creation of a modern basis for the protection of intellectual property objects in the military-technical sphere, as well as improvement of the existing legal framework of the system of collective management of property copyright and related rights. The presence of a need to improve the institutional basis of the process of commercial use of intellectual property objects used in entrepreneurial activity in the direction of implementing the concept of a single intellectual property body created in our country, the completion of the process of commercial use of intellectual property objects used in entrepreneurial activity by specialists of high level, establishment of cooperation between public and private organizations, deepening of cooperation with international organizations in this field, establishment of cooperation with relevant public authorities of other states, proper support of the functioning of public organizations in the field of intellectual property. The priority of the task of improving the infrastructural base of the process of commercial use of intellectual property objects used in entrepreneurial activity is emphasized.

Keywords: capitalization, commercial use, object of intellectual property, entrepreneurial activity, legal regulation, market exploitation, commercial application.

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Introduction and statement of the problem

Market exploitation of the results of intellectual creative activity of a person is an unconditional prerequisite for the formation of the vector of modern development of Ukraine. In this regard, the problem of improving the legislative regulation of the process

of converting intellectual property objects used in entrepreneurial activity into goods belongs to the most important theoretical and practical aspects of socio-economic development, and in the conditions of modern domestic society, this problem becomes especially relevant. This is primarily due to the fact

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that the need to introduce effective technologies and innovations into production is constantly growing. Therefore, for the vast majority of managers, modernization and improvement of the technological base of the domestic industry is a fully realized need. The question of the commercial use of intellectual property objects in entrepreneurial activity looks relevant also because today innovations determine the political independence of each individual state. And meanwhile, the commercial use of intellectual property objects in business today in the world has already turned into a separate sphere of social relations and, according to experts, is worth about five trillion dollars. USA per year [1, p. 56]. And the growth rate of capitalization of such objects on the international market is 12%, which significantly exceeds the rate of increase in industrial production (2.5–3% per year) [2]. Thanks to the commercial use of intellectual property objects in entrepreneurial activities, the world's leading countries occupy dominant positions in the international market of knowledge-intensive products, the share of which is in the USA – 39%, in Japan – 30%, and in Germany – 16%, while the share of Ukraine is less than 0.1% [3, p. 138]. That is why the problem of commercial use of the results of intellectual activity in entrepreneurial activity is fundamentally important for the innovative development of our country.

Analysis and research of publications

The current state of scientific development of the problems of legislative support of the process of commercial use of intellectual property objects in entrepreneurial activity is due to the absence of systematic scientific research on this issue in the domestic legal doctrine. At the same time, a number of scientific publications contain mostly fragmentary provisions regarding the legislative support of the process of commercial use of intellectual property objects in entrepreneurial activity. The theoretical foundations of the process of turning intellectual property objects into goods have been developed to some extent in the studies of such domestic scientists as V.D. Bazilevich, L.V. Brazhna, O.B. Butnik-Siverskyi, M.V. Vachevskyi, L.S. Verbovska, O.I. Vivchar, S.O. Harna, S.G. Dubovyk, V.M. Zhuk, V.G. Zinov, M.M. Kapinos, V.M. Kossak, R.S. Kostsyk, P.P. Krainev, M.M. Xenofontova, V.I. Mikulonok, V.I. Mukhopad, V.A. Naberukhin, T.V. Pavlenko, P.G. Break, N.M. Proskurina, Yu.S. Rudchenko, V.G. Semenova, G.L. Stupniker, A.I. Teslia, P.M. Tsibulev, O.V. Fomina, O.G. Cherep, V.P. Chobotaryov and others. In addition, certain aspects of this problem were highlighted in the works of such scientists, among whom I.I. Dakhno,

I.M. Korostashova, O.P. Orlyuk, O.A. Podopryhoda, O.D. Svyatotskyi and others. However, the problem of building a system of legislative support for the process of commercial use of intellectual property objects in entrepreneurial activity in Ukraine requires a more in-depth study, which determines the relevance of the study. The realization of the role of intellectual property in ensuring sustainable development is impossible without solving the current organizational, legal and managerial problems of its effective use through market exploitation.

The purpose of the article

Identifying the main problems of building a system of legislative support for the process of commercial use of intellectual property objects in entrepreneurial activity, as well as substantiating possible ways of solving them.

Presenting main material

The issue of commercial use of intellectual property objects in entrepreneurial activity is not new at all – it is regularly discussed by the technical and legal elite, as well as business representatives. And there is every reason to say that it sometimes becomes the subject of speculation. However, its legal and economic components are quite often underestimated, when the first is determined by the provision of incentives and incentives to those who turn intellectual property into goods, as well as legal support, its form and guarantees, and the second by profitability and competitiveness. At the same time, the very fact that this problem has been discussed for a long time at various levels confirms its relevance. This situation is primarily caused by the conceptual interpretation of the essence of intellectual property, which is dominated by the proprietary approach and the approach of exclusive intellectual property rights. In addition, the generalized rather than object-by-object approach to the commercial use of intellectual property objects for a separate object did not justify itself at all. A significant majority of the world's economies focused on breakthrough areas of science and technology development, and other areas were boosted at their expense. Accordingly, where there are promising economic developments, intellectual property rights to them are commercialized, but where there is only the visibility of the object and the illusion of receiving benefits from the commercial use of rights to it – not. Even administrative methods of motivation to implement the results of scientific and technological progress did not cope with the solution of this problem. Meanwhile, the commercial use of intellectual property objects has a very pragmatic orientation and mainly concerns economic law.

Domestic legal norms regulating relations that

arise in the field of intellectual property are designed to ensure the protection of intellectual products, inventions, newly created useful models from their illegal use, to ensure the correct assessment of the work invested in an invention or other development of an individual or entire labor teams. Legislation on intellectual property enshrines the right of its owner to own, use and dispose of it. On the other hand, an important part of the regulation of intellectual property relations is the provision of opportunities for its commercial use in entrepreneurial activity, that is, its introduction into economic circulation and the receipt of profit from this process [4, p. 265]. The direction of improving the system of legislative regulation of the process of commercial use of intellectual property objects in entrepreneurial activity is no less important. The analysis of the intellectual property market in Ukraine convincingly shows that, provided an effective system of its protection is created, intellectual property can turn into one of the most liquid goods. The use of the latest technologies, scientific developments, «know-how» is an absolute guarantee of the successful development of any business or production. Intellectual property becomes an important source of income in itself. Accordingly, the development of the intellectual property market in Ukraine will significantly accelerate Ukraine's entry into the world community on the terms of equal partnership.

At the same time, as most modern experts point out, the development of the intellectual property market in Ukraine is experiencing a large number of problems. It is about: low competitiveness of the Ukrainian economy in the field of innovation; relatively low level of conversion of intellectual property objects into goods and their monetization by Ukrainian entrepreneurs as intangible assets; the tendency to decrease the level of innovative activity of Ukrainian entrepreneurs; underdevelopment and uneven distribution of innovative infrastructure by region; the practical absence of effective financing mechanisms for the development of intellectual property, etc. Noticeable shortcomings of the system of legislative regulation of the process of commercial use of intellectual property objects in entrepreneurial activity in Ukraine cause, on the one hand, significant difficulties in the production of high-quality domestic intellectual product and its protection, and on the other hand, open quite wide opportunities for almost uncontrolled use of counterfeit products and quick receipt of excess profits. Accordingly, improving the economic climate in the intellectual property market and simplifying procedures for its commercial use in business activities should significantly reduce the number of violations in the field of intellectual

property. The analysis of market relations of intellectual property in Ukraine, in our opinion, allows us to determine the main measures to improve the system of legislative regulation of the process of commercial use of intellectual property objects in entrepreneurial activity. They should become:

- simplification of procedures for registration of rights to intellectual property objects and registration of facts of transfer of exclusive property rights to them;
- state support for the process of patenting domestic intellectual property objects in foreign countries and preventing the entry into the domestic customs territory of those goods that are imported in violation of intellectual property rights;
- introduction of credit programs for participants in the intellectual property market who implement advanced innovative technologies and inventions created in Ukraine;
- implementation of business risk insurance programs during the implementation of innovative technologies and inventions created in Ukraine;
- easing the tax burden during the commercial use of intellectual property objects in business activities created in Ukraine;
- provision of methodological, methodical and informational assistance on issues of legal protection of objects of intellectual property rights on the market of Ukraine and general improvement of the culture of conducting business in the field of intellectual property.

It will certainly contribute to the development of the system of legislative regulation of the process of commercial use of intellectual property objects in business activities and improvement of the process of interaction between inventors, scientists and business representatives, as well as the development of innovative activities and technology transfer [5, p. 57]. The solution to this problem requires the promotion of interaction between scientific institutions, educators and business, the promotion of the creation of scientific parks, business incubators, startups, centers for the commercial use of intellectual property at higher educational institutions and scientific institutions, and the provision of methodological, methodical and other informational assistance to scientific parks, centers for the commercial use of intellectual property objects in business activities on issues related to the protection of intellectual property rights. It is necessary to implement the recommendations of the Parliamentary hearings on the topic: “On the state and legislative support for the development of science and the scientific and technical sphere of the state”, approved by the relevant Resolution of the Verkhovna Rada of Ukraine dated February 11, 2015 [6], in particular, the initiation of an international project of the World Organization

in Ukraine intellectual property (hereinafter – WIPO) “Establishment of Technology and Innovation Support Centers”, the purpose of which is to simplify access to technical knowledge and increase the efficiency of patent information use in regional and regional centers of scientific and technical information. The improvement of the system of legislative regulation of the process of commercial use of intellectual property objects in entrepreneurial activity also requires the promotion of the activities of the subjects of the innovative system of Ukraine in terms of providing methodological and methodical assistance in matters of legal protection of objects of intellectual property rights, as well as the provision of methodological, methodical and other informational assistance during the implementation of state investment programs.

They demand the improvement of mechanisms for acquiring legal protection of intellectual property by ensuring the examination of applications for relevant intellectual property at the level of the world’s leading patent offices and improving the methodical provision of examination of applications for intellectual property. It is necessary to modernize the system of information technologies used in the state system of legal protection of intellectual property, bring it into line with modern technologies used in the field of intellectual property by the leading countries of Europe and the world, as well as the development of patent and information support in the field of intellectual property, ensuring a wide public access to information related to the acquisition of intellectual property rights.

Other problems related to the creation of appropriate conditions for the commercial use of intellectual property objects in entrepreneurial activity also require special attention. And one of the first such problems is deregulation and stimulation of these processes. We are talking about the liberalization of the procedure for registering intellectual property rights (in accordance with the practice of the European Union, namely, the issuance of a paper copy of the protection document for objects of intellectual property at the request of the right holder [7, p. 213]) and the procedure for registering the facts of the transfer of exclusive property rights. The problem of improving communications between the examination institution, the single body of intellectual property and applicants (owners) of security documents (development of electronic document flow, conducting electronic record-keeping for applications, conducting meetings of the Appeals Chamber of the “Ukrainian National Office of Intellectual Property and Innovations” (UKRNOIVI) in the mode also needs to be solved video conferences). The introduction of tax incentives for business entities that implement advanced

innovative technologies and inventions created in Ukraine and the introduction of credit programs for business entities that implement advanced innovative technologies and inventions created in Ukraine seem important. And finally, it seems necessary to initiate risk insurance programs in entrepreneurial activity during the introduction of advanced innovative technologies and inventions created in Ukraine, the development of communications between creators, scientists and business, as well as the improvement of the culture of conducting business with the use of intellectual property rights [8, p. 111–112].

By the way, stimulating the processes of commercial use of intellectual property objects in entrepreneurial activity also affects a broader problem – stimulating the creation of results of intellectual creative activity. In particular, in order to improve stimulation in the field of intellectual activity, in addition to improving the state’s management mechanisms for the creation and use of the intellectual potential of Ukrainian society in the interests of activating the innovative development of the economy, it is necessary to improve the mechanisms for encouraging the creation of a favorable innovative climate based on the values of a post-industrial society, which is based on knowledge and effective commercial use of intellectual property in entrepreneurial activity [9, p. 237]. It is necessary to assist the institutes of creators of objects of intellectual property rights (authors, inventors, performers, etc.), representatives in intellectual property matters (patent attorneys) and evaluators in the field of intellectual property and support the activities of creative unions and other non-governmental organizations of the country operating in the field intellectual property. The mechanisms for using the innovative potential of intellectual property objects in the interests of powerful innovative development of the economy and ensuring the optimal relationship between administrative regulation of methods of stimulating intellectual activity and their regulation on the basis of market mechanisms need further improvement [10, p. 141]. And the attraction of private sector investment in scientific research, innovation and protection of intellectual property must occur simultaneously with the dissemination of knowledge about the role of intellectual property in stimulating competition, increasing the competitiveness of the economy, developing trade and attracting investment. Ukraine needs to create and promote the country’s brand in order to improve the image of the products of national producers and develop recommendations for improving collective management activities, strengthening the cooperation potential of the country’s

collective management organizations with foreign specialized organizations. The development of the intellectual property market and the creation of conditions for its monitoring and active involvement in market relations of intellectual property objects created with budget funds will contribute to stimulating the creation of the results of intellectual creative activity. It is important to facilitate the process of obtaining intellectual property rights and carrying out their evaluation, followed by their introduction into business circulation in institutions, enterprises and institutions in the areas of scientific, scientific and technical, educational and industrial activities, as well as in areas of activity related to provision of relevant services. An urgent task is also to improve the system of economic incentives (credit, tax, insurance, etc.) to activate the processes of creation, protection and commercial use of intellectual property objects in entrepreneurial activities, the development of the market for these objects in the country, as well as the powerful innovative development of the economy.

An important task of developing the necessary conditions for the commercial use of intellectual property objects in entrepreneurial activity is the involvement of small and medium-sized enterprises in the use of intellectual property objects in their own entrepreneurial activity. In this context, appropriate work should be carried out on the development of mechanisms for subsidizing small and medium-sized enterprises (with the help of patenting credit [11, p. 342]) and raising the awareness of representatives of these business entities about intellectual property. Its further improvement requires the implementation of legal and technological audits for small and medium-sized enterprises, a wide range of patent searches oriented to their needs, as well as marketing researches oriented to the needs of small and medium-sized enterprises. It also seems necessary to facilitate the evaluation of technical solutions developed by these enterprises, regarding the prospects of their patentability and commercial use.

Separately, it should be said about the importance of improving the effective use of state-owned intellectual property rights by enterprises in business activities. An important step on the way to solving this problem should be the improvement of the legislation regarding the distribution of intellectual property rights to objects created at the expense of the state budget. The issue of determining software needs (taking into account the possibilities of using free software and open-source software) and developing indicative tender conditions for the purchase of licensed software, conducting legal and technological audits of the use of intellectual property rights by state enterprises

are also needed. and providing proposals regarding their protection, summarizing information on the use of intellectual property objects by state enterprises and preparing proposals for increasing the efficiency of such use, developing programs for the use of intellectual property in business activities and evaluating its effectiveness, as well as providing methodological, methodical and other assistance to state enterprises on matters related to the protection of intellectual property rights.

An important step on the way to improving the legislative regulation of the process of commercial use of intellectual property objects in entrepreneurial activity should be increased attention to personnel support in the field of intellectual property. It is necessary, first of all, to initiate a state order for the retraining of personnel on intellectual property issues for specialists of judicial, customs and law enforcement agencies. An urgent task is to promote the policy of providing free choice for higher educational institutions to determine the degree of education (educational qualification level “bachelor” or “master”) at which the course “Intellectual property” should be taught (with the unification of the course name in all higher educational institutions) as a mandatory course of the curriculum, promoting the activities of higher educational institutions in opening master’s programs, including interdisciplinary ones, in intellectual property, as well as promoting the creation of opportunities for conducting scientific research and obtaining scientific degrees in the field of intellectual property within the limits of individual specialties in various fields sciences (legal, economic, technical, agricultural sciences, etc.). Participation in the preparation of joint publications on intellectual property issues with scientific institutions, including encyclopedic, scientific and practical commentaries on legislation, popular scientific publications, etc., and the organization of a distance learning system for specialists according to the program of the basic Ukrainian-language module of the WIPO Academy DL-101 course should become traditional. “General course on intellectual property issues” and specialized courses of the WIPO Academy and the development of training programs with the involvement of WIPO Academy specialists. Special attention needs to be paid to the organization of training according to the developed educational programs with the issuance of joint diplomas (in accordance with the Program of Cooperation between the Cabinet of Ministers of Ukraine and WIPO) and the development of international cooperation regarding human resources in the field of intellectual property. Therefore, the improvement of domestic legislative regulation of the

process of commercial use of intellectual property objects in entrepreneurial activity should take place in the direction of spreading knowledge about intellectual property.

Much more attention should be paid to the detailed study of foreign experience in the processes of state control of the commercial use of intellectual property objects created at the expense of budget funds. One of the most important innovations in recent years has been the introduction of IP Box regimes in some European countries, which provide for a significantly reduced tax rate on income received from various forms of intellectual property (patents, software, utility models, know-how, trade secrets, secrets production, etc.).

Conclusions

Thus, the determination of the purpose, strategic directions and main tasks, priorities and prospects for the further development of the system of legislative regulation of the process of commercial use of intellectual property objects in entrepreneurial activity should be based on the results of a thorough analysis of the current state as the very activity of the subjects of legislative regulation of the process of commercial use objects of intellectual property in business activities in relation to the implementation of state policy in the field of intellectual property, as well as the field of intellectual property itself. The effectiveness of implementing the tasks of legislative regulation of the process of commercial use of intellectual property objects in entrepreneurial activity depends on internal factors, favorable opportunities, as well as those threats that can negatively affect its development and depends on the influence of external factors. Strategic directions for the further development of the system of legislative regulation of the process of commercial use of intellectual property objects in entrepreneurial activity in Ukraine should focus on the solution of the following three sets of basic topical problems of legislative regulation in the field under investigation: problems of the regulatory framework (it includes acts of national legislation, as a whole legal provisions, on the basis of which subjects of public administration create appropriate conditions for the acquisition, implementation, protection and protection of rights arising in connection with various types of intellectual and creative activity of members of society), problems of the institutional base (subjects of legislative regulation of the process of commercial use, vested with relevant powers in the field of intellectual property in order to solve a wide range of tasks related to the provision of legal protection, management, implementation and protection of intellectual property rights), as well as problems of the infrastructure base (elements and

relationships that ensure and support the functioning of the field at the appropriate level) intellectual property, as well as users of this field).

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ЗАКОНОДАВЧЕ РЕГУЛЮВАННЯ КОМЕРЦІЙНОГО ВИКОРИСТАННЯ ОБ'ЄКТІВ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ В ПІДПРИЄМНИЦЬКІЙ ДІЯЛЬНОСТІ

Хрідочкін Андрій, Гармідер Лариса, Ломакіна Анастасія, Іванова Марина

У статті аналізуються актуальні питання сучасного процесу законодавчого регулювання комерційного використання об'єктів інтелектуальної власності в підприємницькій діяльності. Запропоновані конкретні пропозиції стосовно стратегічних напрямків подальшого вдосконалення організаційно-правових засад процесу комерційного використання об'єктів інтелектуальної власності в підприємницькій діяльності, які повинні бути зосереджені на розв'язанні трьох наступних блоків актуальних проблем: проблем законодавчої, інституційної і інфраструктурної бази комерційного використання об'єктів інтелектуальної власності в підприємницькій діяльності. Акцентовано увагу на потребі систематизації українського законодавства про юридичну відповідальність за порушення прав на об'єкти інтелектуальної власності, які використовуються в підприємницькій діяльності, адаптації чинних вітчизняних нормативно-правових актів у сфері інтелектуальної власності до відповідних актів Європейського Союзу, законодавчого регулювання питання утилізації об'єктів інтелектуальної власності, які використовуються в підприємницькій діяльності, створення сучасної бази охорони об'єктів інтелектуальної власності у військово-технічній сфері, а також удосконалення існуючої законодавчої бази системи колективного управління майновими авторськими та суміжними правами. Виявлена наявність потреби вдосконалення інституційної бази процесу комерційного використання об'єктів інтелектуальної власності, які використовуються в підприємницькій діяльності в напрямку реалізації концепції створеного в нашій країні єдиного органу інтелектуальної власності, комплектації процесу комерційного використання об'єктів інтелектуальної власності, які використовуються в підприємницькій діяльності фахівцями високого рівня, налагодження взаємодії між публічними і при-

ватними організаціями, поглиблення співробітництва з міжнародними організаціями в даній галузі, налагодження співробітництва з відповідними органами публічної влади інших держав, належної підтримки функціонування громадських організацій у сфері інтелектуальної власності. Наголошено на пріоритетності задачі вдосконалення інфраструктурної бази процесу комерційного використання об'єктів інтелектуальної власності, які використовуються в підприємницькій діяльності.

Ключові слова: капіталізація, комерційне використання, об'єкт інтелектуальної власності, підприємницька діяльність, правове регулювання, ринкова експлуатація, торговельне застосування.

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The article analyzes current issues of the modern process of legislative regulation of the commercial use of intellectual property objects in entrepreneurial activity. Specific proposals regarding strategic directions for further improvement of the organizational and legal foundations of the process of commercial use of intellectual property objects in entrepreneurial activity are proposed, which should be focused on solving the following three blocks of current problems: problems of the legislative, institutional and infrastructural basis of the commercial use of objects intellectual property in business activities. Attention is focused on the need to systematize Ukrainian legislation on legal responsibility for infringement of rights to intellectual property objects used in business activities, adaptation of current domestic normative legal acts in the field of intellectual property to the relevant acts of the European Union, legislative regulation of the issue of disposal of objects intellectual property used in business activities, creation of a modern basis for the protection of intellectual property objects in the military-technical sphere, as well as improvement of the existing legal framework of the system of collective management of property copyright and related rights. The presence of a need to improve the institutional basis of the process of commercial use of intellectual property objects used in entrepreneurial activity in the direction of implementing the concept of a single intellectual property body created in our country, the completion of the process of commercial use of intellectual property objects used in entrepreneurial activity by specialists of high level, establishment of cooperation between public and private organizations, deepening of cooperation with international organizations in this field, establishment of cooperation with relevant public authorities of other states, proper support of the functioning of public organizations in the field of intellectual property. The priority of the task of improving the infrastructural

base of the process of commercial use of intellectual property objects used in entrepreneurial activity is emphasized.

Keywords: capitalization, commercial use, object of intellectual property, entrepreneurial activity, legal regulation, market exploitation, commercial application.

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