

OBJECTS OF INTELLECTUAL PROPERTY RIGHTS IN UKRAINE

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Summary: The present article is devoted to the problems of the objects of intellectual property rights in Ukraine. The articles of the Civil and Economic Codes are studied. The laws of the Constitution of Ukraine (01.02.11) are considered. The article is based on the materials of the conference in Yalta (2008). The conclusion is made that the main task of the legislation is to introduce and to develop mechanisms of converting the intellectual resources of the nation, the intellectual capital of the Ukrainian people.

Key words: the Civil Code, the Constitution of Ukraine, the Economic Code, mechanism of converting, object of intellectual property right.

Анотація: Стаття присвячена проблемам об'єктів прав інтелектуальної власності. Вивчаються статті Цивільного та Господарського кодексів України. Розглядаються закони Конституції України (01.02.11). Стаття базується на матеріалах конференції в Ялті (2008). Робиться висновок, що головне завдання законодавства – вводити та розвивати механізми перетворення інтелектуальних ресурсів, інтелектуального капіталу українського народу.

Ключові слова: Господарський кодекс, Конституція України, механізм перетворення, об'єкт права інтелектуальної власності, Цивільний кодекс.

Аннотация: Статья посвящена проблемам объектов прав интеллектуальной собственности. Изучаются статьи Гражданского и Хозяйственного кодексов Украины. Рассматриваются законы Конституции Украины (01.02.11). Статья базируется на материалах конференции в Ялте (2008). Делается вывод о том, что главная задача законодательства – вводить и развивать механизмы превращения интеллектуальных ресурсов, интеллектуального капитала украинского народа.

Ключевые слова: Гражданский кодекс, Конституция Украины, механизм превращения, объект права интеллектуальной собственности, Хозяйственный кодекс.

Today the world economy is developing under the influence of new information and telecommunication technologies that require significant intellectual charges. So the main value of modern society is highly-qualified specialists, who effectively use their

intellectual potential, by generating new ideas aimed at improving science and technology. An important source of economic growth in developed countries is also the industry of copyright and related rights [8].

National regulatory and legal framework in the field of intellectual property currently meets the international norms and standards, constantly evolving and being improved. Legal relations in this sphere shall be governed by specific provisions of the Constitution of Ukraine, the regulations of civil, administrative, economic, criminal code of Ukraine, respective procedural codes, regulations of individual laws in Ukraine, a number of international agreements. Today this is an important task to harmonize national legislation in the field of intellectual property rights with the Directives of the EU.

A lot of attention is paid to the administrative and judicial protection of rights on the results of intellectual labor. Currently, there are all grounds to speak about substantial achievements. Protection of the rights in Ukraine is made by such

organs of State executive power as a Ministry of education and science of Ukraine, the State Department of intellectual property, Ministry of Internal Affairs, State Customs Service of Ukraine, Antimonopoly Committee of Ukraine, security service of Ukraine, government's state tax of Ukraine, State Committee of Ukraine for technical regulation and consumer policy, as well as the general courts and specialized courts separate judicial jurisdictions, namely, the economic and administrative courts [8].

The jurisdiction of the courts extends to all legal relations that arise in the State, and the petition to the Court is inalienable from the right of legal or physical person according to the Constitution of Ukraine. [1] Protection of intellectual property rights is carried out within the framework of civil, economic, administrative, criminal, customs legislation, and the owner of rights has the ability to seek protection of his rights in administrative order in the State bodies of executive power [8].

The effectiveness of the legal protection of intellectual property rights depends on many factors, one of which is the presence of perfect legislation [4, 5, 6, 7]. Today in Ukraine the modern regulation and legal framework in the field of intellectual property have been created, which provides the ability to acquire, implement and defend the rights of all well-known intellectual property. These objects of copyright and related rights, as well as inventions, utility models, industrial designs, trademarks, geographical indications, the topography of integrated circuits, plant varieties.

The vast majority of the provisions of the Civil Code of intellectual property of Ukraine (1 January 2004) are located in the 4th book "intellectual property" [2]. It contains 12 chapters, establishing General provisions on intellectual property in scientific discovery, invention, utility model, industrial design, and the structure of integrated microcircuits, innovative offer a variety of plants, breed animals, as well as intellectual property rights to the trade name, trade mark, geographical indication, and trade secrets.

In particular, Article 418 of the Code of "The concept of rights of intellectual property is defined as intellectual property as the right of the person at the result of intellectual creative activity or to another object of intellectual property, the determined with Code and other legislation [2].

In particular, the term "trademark for goods and services" is replaced by the international one and got a distribution in commercial circuit in the territory of Ukraine, the term "trademark", the term "brand name" are replaced to the term "trade name", and the term "qualified indication of origin" to the term "geographical indication" (Article 420 of the Code) [2].

In a new way, in full compliance with the Constitution of Ukraine, relations between the objects of intellectual property rights are regulated, established by the order and in connection with the implementation of labor contract.

Property right to the intellectual property rights, established in connection with the implementation of the contract, belongs to the person, who established

this object and the legal and physical person, unless otherwise specified in the contract (Article 429 of the Code) [2].

Important changes were made in the Code, regarding the mode of legal protection of the objects of intellectual property.

The new Civil Code of Ukraine acknowledges the innovative suggestions in any area of public-utility operations. In article 482 of the Code the definition of “Innovative offer” is mentioned [2]. According to this definition, the innovative offer is recognized by the legal person offer, which includes the technological (technical) or organizational decisions in any field of activity. The object of innovative suggestions may be material object or process.

According to Chapter 1, Article 481 of the Code, the status of the innovative proposal could get a managerial offer [2]. However, only in the case, when it is a material object or process, it may refer to the design of a product or technology. A subject of intellectual property rights to the innovative sentence according to Article 483 of the Code is the author and legal person, who this proposal is given to [2]. It is also a new provision, which previously was not mentioned in the legislation. Since Chapter 41 does not contain a norm, which in this case, it should be the norm of Article 428 of the Code, namely the author and legal person either should conclude an agreement on the use of such property, or to realize the right to own property jointly. Apparently, according to the standards set by the Chapter 26 of the Code. Finally, Article 484 contains norms under which the author of innovative proposals has the right to conscientious promoting of a legal person to whom the offer is presented, and the legal person has the right to use this proposal in any volume [2].

It is also worth noting that according to the Legislation of Ukraine, based on the Constitution of Ukraine, Criminal and Civil Codes, starting in 1992, there are special laws concerning different fields of activity of the MEDIA. Among them there is the law of Ukraine “About the information ”, the law of Ukraine “About print media (press) in Ukraine ”, the law of Ukraine “On television and radio broadcasting ”, the law of Ukraine “About the copyright and related rights ”, “About the information agency”, the law of Ukraine “About advertising”, the law of Ukraine about the “State secret”, the law of Ukraine “About amendments and additions to the provisions of legislative acts of Ukraine concerning the protection of honor, dignity and business reputation of citizens and organizations ”, the law “About connection ”, the law of Ukraine “About the National Council of Ukraine on television and radio broadcasting ”, the law of Ukraine “About State support of mass media and social protection of journalists ”, the law of Ukraine “About the order of the coverage of the activities of the organs of State power and bodies of local self-government in Ukraine media”, the law of Ukraine “About the scientific and technical information ”, the law of Ukraine “About protection of information in the automated systems ”, the law of Ukraine “About a publishing deal ”, the law of Ukraine “About professional creative workers and creative unions ”, the law of Ukraine “About the system of public television and radio broadcasting of Ukraine ”, the law of Ukraine “About elections of people's deputies ” and others.

Thus, the main task of the legislation is to develop and introduce mechanisms of converting the intellectual resources of the nation, the intellectual capital of the Ukrainian people.

References

1. Конституція України у редакції від 01.02.11. 2. Цивільний кодекс України від 16.01.2003 р. № 435-IV. 3. Господарський кодекс України у редакції від 11.03.07. 4. Закон України “Про охорону прав на винаходи і корисні моделі” від 15.12.1993 р. № 3687. 5. Закон України “Про охорону прав на промислові зразки” від 15.12.1993 р. № 3688-XII. 6. Закон України “Про авторське право і суміжні права” від 23.12.1993 р. № 3792-XII. 7. “Тимчасове положення про правову охорону об’єктів промислової власності та раціоналізаторських пропозицій в Україні”, затверджене Указом Президента України від 18 вересня 1992 року, № 479/92 зі змінами на підставі Указу Президента від 22.06.1994 р. № 324/94. 8. Виступи учасників міжнародних конференцій з захисту об’єктів інтелектуальної власності у Ялті у 2008р.