REFORMING THE NATIONAL SYSTEM OF INTELLECTUAL PROPERTY PROTECTION IN UKRAINE

PhD (Economics), Associate Professor Taras Shevchenko National University of Kyiv, Lozova G., Kyiv.
PhD (Economics), Associate Professor National Aviation University, Zhavoronkov V., Kyiv, Ukraine.
zhavor@ukr.net

Abstract: In the article the essence and content of the reform of The National system of intellectual property, investigated the current state and problems of development of the intellectual property system, identifies the main factors: economic, social and political that prevent its development, and the prospects of its development.

KEYWORDS: INNOVATION, INTELLECTUAL PROPERTY, COMMERCIALIZATION OF INNOVATIVE PRODUCT, PROTECTION OF INTELLECTUAL PROPERTY, THE NATIONAL SYSTEM OF INTELLECTUAL PROPERTY PROTECTION

1. Introduction

The reform of The National system of intellectual property began in 2016 in Ukraine. The main reasons for the reform were the slowdown in the pace of the country's innovative development, the inadequate level of commercialization of innovative products, and the obligations in the field of intellectual property protection adopted by Ukraine in the process of European integration.

The problem of the integrated development of the national economy of Ukraine on the basis of comprehensive introduction of innovations in all branches of social production remains far from being resolved. According to the Ministry of Economic Development and Trade over the last 5 years in Ukraine, about 50,000 applications for the registration of intellectual property are annually filed. In particular, 53,454 applications were submitted in 2017, of which: 4,048 applications for inventions, 9,105 applications for the registration of utility models, 2,480 applications for the registration of industrial designs, 37,817 applications for the registration of signs for goods and services [1, p. 7]. Some of the applicants are denied in gaining the protection document, in particular in 2017 only 55.5% of the applicants received this protection. However, in the future, in the case of presence of a protection document, a significant part of intellectual property rights by their owners is not used in such a sphere of social production as intangible assets. In Ukraine, the share of intellectual capital in the assets of domestic enterprises does not exceed 1%, while in the capital structure of European and American companies this share reaches 50%. So, having a powerful scientific, technical and innovative potential, Ukraine is not able to ensure the full involvement of the results of intellectual activity in the sphere of social production, which negatively affects the rate of economic growth and the general level of the nation's welfare.

We reckon that one of the main reasons why this situation appears is the lack of an effective system of protection of intellectual property rights in Ukraine, which would facilitate the commercialization and operational transfer of the results of creative intellectual activity.

To raise the welfare of the Ukrainian nation and achieve the goals of economic growth defined in the 2020 Strategy of Sustainable Development of Ukraine, it is very important for us to attract investments for innovation, stimulate the export of innovative products, increase the output of import-substituting competitive products, and develop small and medium-sized innovative businesses in the country. Therefore, the national system of intellectual property needs reform and transformation.

The National system of intellectual property protection is an aggregate of economic and legal relations, the subjects of which are state, public and private organizations that, through their own methods, tools and instruments, ensure the development of intellectual, creative activity, and protection of its results.

The reform of the national intellectual property system is defined by the Strategy of Sustainable Development of Ukraine-2020 [2], the Law of Ukraine "On Judicial System and Status of Judges" [3], the Decree of the President of Ukraine "On the formation of the Supreme Court of Intellectual Property" [4], the Concept of Reforming the Public System legal protection of intellectual property in Ukraine [5], and other regulatory and legislative acts.

The main problems in the field of protection of intellectual property rights (IP) in Ukraine:

• Lack of effective tools for IPR protection;
• Low IP enforcement in the Internet;
• Absence of cases of bringing to responsibility of owners of sites with pirated content;
• The presence of organized markets where the sale of counterfeit products and products with pirated content takes place;
• Non-transparent mechanism for collection and distribution of royalties;
• Use of unlicensed software both in commercial structures and in state bodies;
• Patent trolling. [4, p.2]

The reasons that led to the aggravation of the above-mentioned problems are ineffective governance and a low level of culture in the society in the field of intellectual property rights.

The main objectives of the reform are to create an optimal, high quality and efficient system of intellectual property, to ensure effective protection of intellectual property rights, to simplify the creation and commercialization of innovative products, to support and develop the national innovation system, and the European integration of Ukraine. As important goals of restructuring, the public administration of intellectual property we can mention following - increasing transparency and eliminating corruption in this area.

In our opinion, especially the protection of intellectual property rights is the tool that can overcome corruption in Ukrainian society. As in the process of innovative activity competition arises between business entities, it stimulates the progress of society and through the mechanism of bankruptcy removes inefficient companies from the market. If intellectual property rights are reliably protected in society and the state supports innovations, inefficient enterprises will no longer succeed in overcoming their competitors through bribery.

In the process of reforming the national system of intellectual property, it is important to ensure public-private partnership. The organization of effective cooperation between universities, research organizations and private business makes it possible to create an innovative environment that facilitates the transfer of technology, the commercialization of the results of intellectual activity.
2. Problems and perspectives of reforming the National system of intellectual property in Ukraine

The national intellectual property system covers national legislation on intellectual property, the state system of legal protection of intellectual property, subjects and objects of intellectual property rights. In this paper, we will focus on the problems of reforming the state system of legal protection of intellectual property.

Until 2017, Ukraine had a three-level structure for the protection of intellectual property rights. The State Intellectual Property Service provided the state policy in the field of intellectual property. The sphere of management of the State Service as an executive authority included: the State Enterprise "Ukrainian Institute of Industrial Property" (DP Ukраптент), the Ukrainian Agency for Copyright and Related Rights (УАРП), the state enterprise "Intelzahist", which dealt with issues of combating violations of rights on objects of intellectual property, mainly on objects of related rights.

In the process of reforming the intellectual property system on May 19, 2017, the State Intellectual Property Service was liquidated. In 2017 the state enterprise "Intelzahist" was also liquidated. Instead of the State Intellectual Property Service, it is planned to create a new state body, the National Intellectual Property Authority (NIPA), which corresponds to the general European practice. The NIPA will implement a state organization in the field of intellectual property management and will be financed by fees from the protection of intellectual property rights. The authority will be subordinated to the Ministry of Economic Development and Trade (previously the State Intellectual Property Service was subordinated to the Ministry of Education and Science of Ukraine). Thus, Ukraine will transition to a two-tier structure of the protection of intellectual property rights. The Ministry of Economic Development and Trade will ensure the formation and implementation of state policy in the field of intellectual property, and the NIPA shall perform certain public functions for the implementation of state policy in the field of intellectual property.

The National Intellectual Property Authority is subordinated to the State Enterprise "Ukrainian Institute of Industrial Property" (State Enterprise "Ukраптент"). This is the only institution in Ukraine for review and examination of applications of industrial property. In 2018 it is planned to conduct an external independent audit of the activities of SE Ukраптент in order to optimize the organizational structure and costs of the enterprise. As in the economy of knowledge the human capital is the most valuable asset of any enterprise, the new personnel policy of the enterprise provides for competitive selection of the company’s management, the creation of a qualified board of directors, the involvement of highly qualified experts who are responsible for conducting a qualitative and qualified examination of submitted applications for facilities industrial property is growing every year. It is interesting to compare the ratio of filed applications and registered protection documents to inventions, utility models, industrial designs and signs for goods and services for the period from 2014 to 2017 (table 1).

In order to stimulate the innovative activity of national economic entities in the framework of the reform of the intellectual property system, it is planned to improve legislation on the mechanism and procedure for crediting fees for activities related to the protection of rights to intellectual property objects, taking into account the Association Agreement between Ukraine and the EU and the provisions of international treaties to which Ukraine joined. It is envisaged to create a single window for the issue of titles of protection to the TSO, which will enhance the transparency and effectiveness of government agencies.

According to the data of Table 1, in the process of registration of intellectual property rights, some of the applicants receive a refusal to issue a protection document (a patent or a certificate for a sign for goods and services). In this case, the decision of the state registration authority may be appealed by the applicant in the Appeals Board or the court. An important innovation in the reform process is the creation of the Appeals Board of the National Intellectual Property Authority, a professional independent professional body, to which business entities can apply in the event of disputes in the field of intellectual property.

In particular, in 2017, the Court of Appeal and the court received 103 objections, which were distributed according to the objects of industrial property as follows: signs for goods and services - 91; invention - 11; useful models - 1. [1, c.24]

An important aspect of reforming the state system of protection of intellectual property rights is the reform of the judiciary and legal proceedings in this area. The issues of deepening the specialization of courts in disputes over intellectual property in Ukrainian society have been debated for a long time. Accordingly, there were two positions on this issue: the creation of a separate court on intellectual property or the introduction of the Chambers of Judges in local and appellate

### Table 1

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>All received applications</td>
<td>44 146</td>
<td>47 819</td>
<td>51 559</td>
<td>53 454</td>
<td>103,6</td>
</tr>
<tr>
<td>Total registered</td>
<td>29 677</td>
<td>26 098</td>
<td>31 016</td>
<td>29 673</td>
<td>95,7</td>
</tr>
<tr>
<td>Value of applications</td>
<td>67,2</td>
<td>54,6</td>
<td>60,2</td>
<td>55,5</td>
<td></td>
</tr>
<tr>
<td>submitted to registered</td>
<td>4 814</td>
<td>4 499</td>
<td>4 094</td>
<td>4 048</td>
<td>98,9</td>
</tr>
<tr>
<td>companies, in%</td>
<td>3 319</td>
<td>3 014</td>
<td>2 813</td>
<td>2 590</td>
<td>92,1</td>
</tr>
<tr>
<td>Inventions:</td>
<td>9 384</td>
<td>8 616</td>
<td>9 558</td>
<td>9 558</td>
<td>95,2</td>
</tr>
<tr>
<td>received applications</td>
<td>9 196</td>
<td>8 153</td>
<td>9 044</td>
<td>9 442</td>
<td>104,4</td>
</tr>
<tr>
<td>ratio of submitted to</td>
<td>98,0</td>
<td>94,6</td>
<td>94,6</td>
<td>98,8</td>
<td></td>
</tr>
<tr>
<td>registered in%</td>
<td>2 664</td>
<td>2 080</td>
<td>2 302</td>
<td>2 480</td>
<td>107,7</td>
</tr>
<tr>
<td>Designs:</td>
<td>2 464</td>
<td>2 021</td>
<td>2 269</td>
<td>2 390</td>
<td>96,8</td>
</tr>
<tr>
<td>received applications</td>
<td>92,5</td>
<td>97,2</td>
<td>98,6</td>
<td>96,4</td>
<td></td>
</tr>
<tr>
<td>ratio of submitted to</td>
<td>27 280</td>
<td>32 621</td>
<td>35 605</td>
<td>37 817</td>
<td>106,2</td>
</tr>
<tr>
<td>registered in%</td>
<td>14 698</td>
<td>12 388</td>
<td>15 618</td>
<td>15 248</td>
<td>111,9</td>
</tr>
<tr>
<td>Marks for goods and services:</td>
<td>53,9</td>
<td>38,0</td>
<td>38,2</td>
<td>40,3</td>
<td></td>
</tr>
<tr>
<td>received applications</td>
<td>Source: developed by author on the base [1, c.23]</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Dynamics of receipt of applications for industrial property objects and registration of titles of protection.
The Ministry of Economic Development and Trade drafted a law on the collective management of property rights of subjects of copyright and related rights, approved by the Cabinet of Ministers of Ukraine in December 2017. The new draft law calls for authors to take decisions on the distribution of collected funds, regulate the mechanisms of "extended" collective management, including the right holder's ability to seize rights, that is, to refuse the services of the CMO, if they do not correspond to his interests. There is also a specialization of the CMO, which will collect funds in a certain area. Therefore, users will be able to clearly determine who exactly, what kind of CMO, they have to pay money for using objects of copyright and related rights. A list of such collective management organizations will be available on the website of the Ministry of Economic Development and Trade.

The new law "On Amending Certain Legislative Acts of Ukraine Regarding the Settlement of Copyright and Related Rights" is also rather controversial. On the one hand, the project contains the necessary changes to harmonize the legislative norms and provisions in the field of copyright and related rights with European norms, corresponds to the obligations that Ukraine assumed by signing the Association Agreement with the EU. On the other hand, the adoption of this law, in the opinion of some experts, may adversely affect market participants. In particular, this concerns the new legal status of the CMO and their place in relations with TV and radio organizations. In fact, if a new law is adopted, the CMO will monopolize the authority to collect royalties. According to the law, the provider or channel can independently resolve the issue of copyright and the direction to enter into contracts directly with the rightsholder. The new law clearly specifies that remuneration is transferred exclusively through the CMO. Moreover, under new changes for registration of the license the broadcasting organizations should necessarily submit the contract with CMO, that, in opinion of experts, is the additional mechanism of pressure on the tele-radio organizations. [8] The question for discussing is the question of separating inherent access as a separate object of copyright and related rights. The law also proposes changes in the part of understanding the constituents of a work that can have independent protection, namely the addition of the work next to the name of the work of the character.

The law also amends the distribution of rights to official works, in particular computer programs and databases. However, it is interesting that the general inconsistency about the rights to official works, which exists between the norms of the Civil Code and the Law on Copyright and Related Rights, is not eliminated by the project.

The law suggests that the rights to all official works which are created by employees of state bodies belong to the employer. The same is assumed for works created at the request of the state. In addition, it is determined that the proprietary rights to the computer program and the database belong to the employer, unless otherwise specified in the contract. About databases, the project also introduces a new category - the right of a special kind of producer of non-original databases. Such changes are proposed with a view to implementing the provisions of the Association Agreement.

The new regulation is also proposed for the calculation of remuneration for the sale of a work of art. The reward to the author (the heir) is paid if the price of selling the work (without taxes) exceeds 2 minimum wages. The amount of compensation depends on the value of the sale, for example, if it does not exceed 59 minimum salaries, then the reward will be 5% of the selling price, if the price is higher, then the percent will decrease. The duty to pay the deductions is held by the seller, regardless of whether he acts on his own behalf or as an intermediary. The procedure for recalculating such remuneration is again carried out through the CMO.

The list of cases of free use of works is expanded. In particular, it is settled that without the consent of the author and without payment of a fee, free provision of works by non-profit
3. Directions of improvement and development of the intellectual property system of Ukraine

So, the problem of reforming the national system for the protection of intellectual property rights requires a comprehensive solution by:

• making appropriate changes and provisions in the national legislation with a view to harmonizing Ukrainian and European law;
• definition of a long-term state Strategy for the development of intellectual property in Ukraine for the formation and implementation of an effective state policy in the field of intellectual property;
• creation of an effective system of state protection of intellectual property rights, which should again be provided by the state body - the National Intellectual Property Authority;
• increasing transparency and bridging corruption in this area;
• stimulation of innovative activity of national economic entities by improving legislation on the mechanism and procedure for crediting fees for the acquisition of rights to intellectual property;
• advocacy of intellectual property in the society with the aim of building citizens' respect and observance of intellectual property rights;
• reforming the judicial system to protect intellectual property rights and establishing effective work of the Supreme Court of Intellectual Property;
• establishment of an effective system of collective management of copyright.

4. References

5. Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part. Available from Internet: zakon.rada.gov.ua/laws/show/984_011
6. Rozporjadzhennja Kabinetu Ministri Ukrainy vid 1.06.2016 № 402-t «Koncepceja reformuvannja derzhavnoi sistemi pravovoj ohoroni intelektual’noi vlasnosti v Ukraini». Available from Internet: https://www.kmu.gov.ua/ua/npas/249086258