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EVALUATION OF THE EFFECTIVENESS OF STATE REGULATION OF INTELLECTUAL PROPERTY

The substantive characteristics of intellectual property that are of decisive importance for the purposes of state regulation have been clarified and supplemented (it is an intangible result of intellectual activity on a tangible medium that has consumer properties of a product and is inseparable from the source of their provision; created in the service sector can be used both in its sectors and in material production; reflects the interaction of entities and is a source of synergistic effect), and the features of intellectual property in the service sector have been systematized. An integrated approach to intellectual property management has been formed and proposed, which, unlike those used, takes into account the specifics of modern development of the service sector (development of interactivity, increased interaction with the material sphere, rapid growth of the «exchange potential», etc.), and allows for the creation of a system-wide platform for developing programs for state regulation of intellectual property. The main directions for the formation and development of the system of state regulation of intellectual property have been proposed, among which the following are priorities in modern conditions: elimination of excessive regulation, development of our own research base, reduction of imports and increase in exports of intellectual property, increased transparency of state regulation and assessment of regulatory measures.

Keywords: *evaluation, effectiveness, state regulation, intellectual property.*

The study of the processes of assessing the state regulation of intellectual property and its impact on the innovative development of the industry shows that the tools of this mechanism are insufficiently developed, low in efficiency and institutionally not formed. All this with objective necessity determines the need for in-depth theoretical research and

methodological developments in order to assess the effectiveness of the system of state regulation of intellectual property, which will ensure the adoption of well-founded management decisions aimed at stimulating the innovative development of the industry.

In the development of the service sector, an important component is the results of intellectual activity, which act as intellectual property. The analysis of intellectual property as a system-forming factor of innovative activity made it possible to identify its features in the service sector and determine key positions that require state regulation [1, 2, 3]. The complexity of this category lies in the fact that, on the one hand, it is a system of legal norms and, from this point of view, is an object of law. On the other hand, it is an independent economic institution that has established itself as an institution of innovative development. These two criterion features of the object under study exist in a dialectical unity, manifested in their constant interaction and interdependence, which cannot be separated, but it is also unlawful to identify them. At the same time, this dialectical unity of the economic content and legal form of intellectual property relations constantly affects the nature of innovative activity, the degree of its activity and effectiveness. This provision, which is general for the economy as a whole and its sectors, fully applies to the service sector.

In this case, it is quite reasonable to assert that it is necessary to approach the analysis and regulation of intellectual property in the service sector in a comprehensive manner, from the point of view of both the economic content and the legal form of this concept. Moreover, the form and content should be considered in their close interaction and interdependence.

Based on this, the author's definition of the category «intellectual property» is proposed. This is a result of intellectual activity secured by property rights, conditioned by such specific qualities of adaptation to the service sector as an intangible nature, inconsistency of quality and inseparability from the source of their provision, which is also characterized by commodity characteristics, which stimulates the generation of new types of services, mainly at the junction of various types of economic activity.

Based on this definition, the substantive characteristics of intellectual property in the service sector were formulated, which are of decisive importance for the purposes of state regulation:

• intellectual property is an intangible result of intellectual activity on a tangible medium, possessing consumer properties of a product and inseparable from the source of their

provision;

• intellectual property objects can be both created and consumed in the intangible sphere, and an intellectual product created in the service sector can be used both in the intangible sphere and in material production;

• intellectual property is systemic and reflects the interaction of intangible sphere entities, as well as the interaction of the service sector and material production, being a source of synergy.

The article examines and systematizes the features of intellectual property in the intangible sphere, which determine the specifics of state regulation and, accordingly, approaches to assessing the effectiveness of regulatory measures and instruments. Thus, the intellectual property potential of service sector organizations increases mainly due to the purchase of intellectual property results, and a little more for enterprises that carry out their own research and development. Since the service sector's own research base is still insufficient for in-depth scientific research and has not yet been formed in certain sectors, the degree of cooperation in the field of developing technological innovations and other intellectual property objects is quite high.

Therefore, in the process of using regulatory measures in the service sector, the state must take into account the interests of all stakeholders involved in the cooperation. Accordingly, the assessment of the effectiveness of regulatory tools should be built. In addition, it should be noted that the formation of new high-tech sectors of the service sector is carried out on the basis of foreign technologies, and, therefore, the results of intellectual activity carried out abroad are used. Such a situation, due to the principle of «inalienability» of intellectual property objects, creates favorable conditions for control and «external management» on the part of its owners, who are individuals or economic entities of other states. This negatively affects the state of economic security of the domestic service sector and national security in general. Therefore, the development of a research base, stimulation of the growth of its own intellectual potential of the service sector, the creation of its own, domestic intellectual products for high-tech sectors should become the focus of attention of the state. Currently, most organizations in the service sector act as consumers, users of the results of intellectual activity, which has already been emphasized above. Only a few organizations create intellectual property objects, mainly high-tech sectors of the

intangible sphere. At the same time, they form a package of related services for consumers of intellectual products. The implementation of these services, in turn, necessitates additional involvement in the use of other results of intellectual activity. Therefore, the assessment of the effectiveness of government regulatory measures should also include an assessment of these secondary effects from the use of intellectual property. In addition, the intangibility of the results of intellectual activity implies the impossibility of transporting them or demonstrating them before sale. This creates an asymmetry of information between sellers of intellectual services and their consumers, which also necessitates government regulation of many sectors of the service sector In other words, intellectual property in the service sector is a reflection, an invariably accompanying component of innovation processes in the real sector of the economy, when technological and product innovations naturally give rise to new systems, types and methods of service, the emergence of new branches of the service sector, previously unknown to the economy of types of economic activity. All this indicates that intellectual property in the service sector can be qualified as an institutional category, distinguished only by its inherent system of rules and regulations, which allows it to be singled out as an independent institution.

The problems of intellectual property management in the intangible sphere are rather poorly developed in domestic economic science [4]. At the same time, today it is already possible to group the existing points of view on this problem within the framework of several approaches to intellectual property management in this sphere. Thus, one group of scientists adheres to the point of view that the main properties of intellectual property in the spheres of services and industrial products coincide, the only difference is in the intangibility of the results of intellectual activity. Consequently, it is concluded that the concepts of management in material production can also be applied in the sphere of services in relation to intellectual property management. Accordingly, this also concerns the assessment of the effectiveness of state regulatory measures. Another group of scientists proceeds from the fact that the sphere of services, as well as intellectual activity, is a special sphere that requires its own approach to the regulation of intellectual property and the assessment of regulatory measures [2]. State regulation in this sphere should be specific in nature and use special tools. Thus, it should be aimed at increasing the intensity of research and development, and not only at increasing the consumption of intellectual products, and in the process of stimulation it is necessary to take

into account shifts in the structure of foreign trade. In the last decade, the development and use of intellectual property has been accompanied by increased interaction in general between suppliers of intellectual products and their consumers, which has led to the formation of new relationships, channels and forms of joint activities. In studies on this topic, this phenomenon is referred to as «customer involvement». In our opinion, this determines the need to revise the approaches to management used. The dissertation study proposes to use an integrated approach that is based on the specific features of the service sector and intellectual property in this area, while at the same time using tools to regulate material production, taking into account the increasing interaction between suppliers and consumers of intellectual products.

It is advisable to formulate the following main vectors of formation and development of the state economic, organizational and tax policy for intellectual property management in the services sector:

• determine the most socially significant priority sectors of the services sector, within the framework of which a set of methods and instruments of state economic, organizational, managerial and institutional stimulation of intellectual property should be selectively applied;

• develop a federal target program for the development of intellectual property in this sphere for each priority sector of the services sector with an appropriate level of financing, which should be built in accordance with state priorities in the services sector and minimization of risks in the sphere of intellectual property;

• use the entire toolkit of regional innovation clusters for the purposes of implementing organizational models of innovative entrepreneurship and stimulating the active use of intellectual property, as well as infrastructure support for innovation in the priority sectors of the services sector determined by the state, taking into account the minimization of risks in the sphere of intellectual property and maximum implementation of its economic functions;

• develop and legislatively enshrine national standards of intellectual property in the services sector, ensuring their strict application in resolving legal disputes regarding the protection of intellectual property in the services sector;

• reduce the aggregate rate of accrual of wages for enterprises and organizations in the service sector, where intellectual work is the dominant type;

• when determining the tax base for the profit tax of enterprises and organizations in the service sector, it is necessary to take into account their expenses for the acquisition of rights

to use programs and databases, as well as one-time payments for the use of rights to the results of intellectual activity and means of individualization;

• in order to increase the investment attractiveness of such service sectors as healthcare and education, it is advisable to exempt non-governmental organizations in these sectors from profit tax, which concerns, for example, small innovative enterprises at universities, large high-tech medical centers.

Thus, the objective need for state regulation of the intellectual property market in the service sector is due to the specificity and contradictory nature of the interaction of intellectual property objects and the service sector. On the one hand, intellectual property objects are a criterion condition for the existence and development of such service sectors as health care, education, information and communication services and others. On the other hand, such service sectors as innovative infrastructure provide invaluable services to facilitate the commercialization of intellectual property objects. This systemic relationship has a significant impact on the complexity and ambiguity of the methods, techniques and instruments of state regulation of this sphere. At the same time, the mechanism of state organizational and legal regulation of intellectual property in the service sector should provide for measures to form a multi-level civilized market of intellectual property objects, including industry and regional markets, which are one of the main conditions for the modernization of the industry and regional economy. A modern understanding of the category of the intellectual property market must necessarily provide for the introduction of a unified legal regime for the formation of intellectual property as a market object with subsequent standardization of these rules, mechanisms for the innovative motivation of innovators, investors, entrepreneurs through the commercialization of intellectual property, the formation of specialized units in the innovation infrastructure and specially trained responsible officials in government agencies authorized to regulate domestic intellectual property.

At present, the importance of the principle of good faith, which is certainly substantively interconnected with moral and ethical categories, is steadily increasing in civil law, including intellectual property law. This is due, among other things, to the fact that good faith in civil circulation is associated with the desire of the parties to civil legal relations, as far as possible, not to allow violations by their actions or inaction of the subjective rights and legitimate interests of other persons, to exercise the rights belonging to them in accordance

with their purpose. Since the term «good faith» is of an evaluative nature, then in connection with its practical application, difficulties arise in understanding its content and implementing this principle in specific civil law relations. When analyzing the concept of «good faith», one should start from the role played by legal principles as the most important regulating components of law in general, as a result of which the principles affect all types of legal activity. In this case, the role of legal principles as the most important legal category is manifested in the relationship between the philosophical and legal-dogmatic essence of law. And this relationship can be traced on the basis of specific normative and legal regulations that regulate social relations, and principles are the initial element in this case. It should be noted that only in this way can the relative stability of law be ensured, especially in the context of a fairly dynamic development of society, which constantly requires changes to legal norms. In this situation, the existence and real action of legal principles, including the principle of good faith, as fundamental principles, postulates, clearly developed and corresponding to the spirit of the law, a specific historical stage, allow us to effectively regulate social relations and prevent serious crises. It is worth paying attention to the importance of legal principles as a basis for the effective activities of law enforcement agencies, because the results of this activity are the most important indicator, a characteristic of the development of a legal state.

It is certain that the law enforcement officer must be guided in his/her activities, including by legal principles, since it is impossible to predict and regulate legislatively all cases that may arise in reality. Historically, the fact remains unchanged that, despite the fundamental nature and significance of legal principles, they were not given the property of obligation in theory and practice, because these ideas, the fundamental principles were considered as wishes expressed by legislators to law enforcement officers for the most accurate interpretation of the law. In turn, law enforcement agencies and other law enforcement officers attached only a formal meaning to such wishes. In the process of development of legislation, one can also highlight such a pattern that the adoption of most serious legislative acts began with a listing of legal principles. However, in the future, this was all that was limited to, because legal principles were positioned as general declarative principles that had only a moral and political nature. At the same time, a comparative analysis of the perception and action of legal principles in Ukraine and Western countries shows some discrepancy. The key characteristic here is

the real, actual application in Western countries of legal principles that play an important regulatory role, in particular, their application is a priority in conflicts with specific legal norms. In addition, it is considered mandatory that newly established legal norms comply with already established legal principles, and legal principles quite often form the basis of court decisions. Such an attitude to the principles of law in recent decades has also been perceived by the Russian legal system at various levels.

With regard to the principle of good faith, which can be understood as one of the limits of the exercise of civil rights, including intellectual rights to the results of intellectual activity and means of individualization, it is necessary to pay attention to the fact that the study of the issue of the limits of the exercise of intellectual rights is most directly interconnected with the problems of protection against unfair competition, abuse of rights, as well as other aspects.

Good faith in intellectual property law is the desire of the subject of intellectual rights, as far as possible, not to allow violation by their actions or inaction of the subjective rights and legitimate interests of other persons, to exercise their rights in accordance with their purpose, taking into account the limitations and exceptions in the field of intellectual property protection established by law. Unfair use of the result of intellectual activity is associated with causing harm to an indefinite number of persons, the interests of the state and society as a whole. It is advisable to distinguish between direct and indirect consolidation of the principle of good faith. Direct include: normative regulation of the principle of good faith as an industry principle of civil legislation and the inclusion of norms on good faith in the text of regulatory legal acts. Legal regulation of the principle of good faith is divided into direct and indirect (expressed in the adoption of legal norms corresponding to this principle, it should include norms devoted to limitations and exceptions (cases of free use) of the results of intellectual activity).

The specificity of the principle of good faith in intellectual property is also determined by the identified criteria of good faith in legal relations in the field of intellectual property, which we propose to consider as follows: consent of the author (copyright holder); compliance with the limitations and exceptions provided for by law; the purpose of creation and methods of using the result of intellectual activity; the behavior of the subject of legal relations, as well as the unfair behavior of economic entities aimed at causing harm to competitors, state registration of the results of intellectual activity and equivalent means of individualization.

When establishing the criteria of good faith, one should, among other things, be guided by the «three-step test» provided for by the Berne Convention for the Protection of Literary and Artistic Works of 1886: in the process of using the result of intellectual activity, no harm should be caused to the normal use of such result, and the legitimate interests of the author should not be unreasonably infringed. Formulating criteria for the unfair use of the result of intellectual activity and introducing these criteria into law enforcement practice will help to increase its effectiveness. We have singled out state registration as an additional criterion for the fair use of intellectual property, as well as means of individualization equivalent to them, since there are more opportunities for unfair use in relation to unregistered intellectual property (although it does not fully guarantee that unfair use will be completely excluded). Taking into account the need to comply with the legal rights and interests of copyright holders, fair use of the result of intellectual property or means of individualization is assumed to be with the consent of the author (copyright holder), unless otherwise provided by law.

When resolving disputes about the unfair use of such a result (means of individualization), it is necessary to take into account the presence or absence of the consent of the copyright holder, taking into account the limitations and exceptions of this result (means of individualization), its perception by users (consumers of goods in which such results and (or) means of individualization are expressed), as well as other circumstances that are important for establishing the good faith of the parties. We consider it necessary to establish the category of «bona fide purchaser (user)» of the result of intellectual activity. This will eliminate the unjustified imposition of liability for violation of intellectual rights of persons using the results of intellectual activity in accordance with the contracts they have concluded. Meanwhile, in practice, there are violations of intellectual property rights associated with the conclusion by the copyright holder of several agreements on the alienation of exclusive rights or the issuance of exclusive licenses in relation to the same result of intellectual activity, as a result of which the acquirers and users of exclusive rights (most often, publishers) suffer significant losses, including lost profits, and there is a need to apply the consequences of such violations and liability rules.

The current legislation does not contain any special rules on the consequences of the termination of an agreement on the alienation of an exclusive right due to significant violations of the agreement by the acquirer of this right, not related to the payment of remuneration,

which upsets the balance of interests of the parties to this agreement.

It is necessary to recognize as unfair competition the actions of persons who receive a patent solely for the purpose of prohibiting the use of the result of intellectual activity by other persons. In this case, the rights are exercised in contradiction with their purpose.

In addition, such a ban infringes on public and (or) private interests, not contributing to the development of scientific and technological progress.

In the event that one of the co-authors entrusts the management of his/her exclusive rights to an organization for collective management of rights without notifying the other co-authors, there is an abuse of rights. In this regard, we believe that when creating a work in co-authorship, the conclusion by one or more co-authors of an agreement on the transfer of powers to manage copyright and (or) related rights to an organization that carries out collective management of the said rights is possible only with the written consent of all other co-authors.

The exercise by parents, adoptive parents and guardians of the exclusive rights of minor children must be conscientious and not cause harm not only to their life and health, honor and dignity, but also to the intellectual rights of children. In this regard, cases of providing access to videos and other works created by the said persons that defame the honor and dignity of a child for public information in information and telecommunications networks should be recognized as an abuse of exclusive rights. Thus, it is necessary to recognize as unfair actions on the part of parents or persons replacing them the creation of results of intellectual activity by means of the child's execution of their «commands» that encourage the child to commit actions that deliberately discredit his honor and dignity, as well as the use of such results. Since children may have the rights of performers in video clips created by their parents or persons replacing them, when using such works, it is necessary to include in contracts with users/acquirers of exclusive rights a provision on the transfer of part of the funds to special accounts of children until they reach adulthood (it is advisable to establish a proportional distribution of the income of parents and children), since in the future the financial situation of the family may change.

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