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MECHANIZM FOR LEGAL REGULATION OF INTELLECTUAL PROPERTY RELATIONS IN UKRAINE

Introduction. The powerful development of intellectual property relations makes their regulation by legal tools even more important. Therefore, the legal regulation of intellectual property relations which has its authentic mechanism plays a significant role.

Analysis of recent research and publications. The relevance of the chosen problem is undeniable as the extent to which the subject has been explored does not meet the needs of the hour. Mechanism of legal regulation of legal relations in the field of intellectual property it was considered in the literature [15, p. 297–305]. Contract in legal regulation of intellectual property relations it was considered in the literature [16, p. 64–76]. However, the comprehensive studies of these Ukrainian scholars do not cover the mechanism for the legal regulation of intellectual property relations. It means that such a phenomenon as the “mechanism for the legal regulation of intellectual property relations” is a hot topic to be presented on the pages of modern civics studies.

The purpose of the article. The study seeks to develop a theoretical concept of the mechanism for the legal regulation of intellectual property relations in Ukraine.

Presenting main material. The legal regulation of intellectual property relations has its own mechanism. It is expedient to define the mechanism

for the legal regulation of intellectual property relations as the set of civil law tools (means, ways, and forms) the coordinated interaction of which can bring harmony to intellectual property relations to protect interests of persons at intellectual property law (private interests), and social and public interests (public interests).

The mechanism for the legal regulation of intellectual property relations is comprised of: intellectual property provisions, intellectual property agreements; jural facts in intellectual property law; intellectual property relations; actions seeking to ensure that the intellectual property rights and interests are exercised and met respectively, and intellectual property obligations are fulfilled; legal consciousness; legal culture.

Intellectual property provisions underlie the mechanism for the legal regulation of intellectual property relations. Considering that intellectual property provisions were not the object of the scientific classification, it is expedient to present our own vision. It is worth dividing all the intellectual property provisions into two groups: a) provisions establishing personal vested intellectual property rights; b) provisions establishing personal intellectual non-property rights.

An important role in the mechanism for the legal regulation of intellectual property relations is played by regulatory (authorizing, obliging, and prohibiting)





intellectual property provisions. Some intellectual property provisions are authorizing. It makes sense to divide this type of the regulatory intellectual property provisions into three subgroups: a) authorizing intellectual property provisions that do not establish any terms and exceptions (for instance, according to Part 1, Article 458 of the Civil Code of Ukraine (hereinafter – the CCU) [14], the author of a scientific discovery is authorised to give their name or a special name to the scientific discovery); b) authorizing intellectual property provisions that establish some terms (for instance, according to Part 1, Article 445 of the CCU, the holder of related rights may allow any person to use a respective item on the terms set by the holder); c) authorizing intellectual property provisions that establish some exceptions (for instance, according to Part 2, Article 24 of the Law of Ukraine “On Copyrights and Related Rights” [2], it is permitted to lend lawfully published printed copies of works except for copies of software programs, databases to non-commercial libraries without the copyright proprietor’s consent).

It is reasonable to divide obliging intellectual property provisions into three subgroups: a) obliging intellectual property provisions that establish some terms (for instance, according to Part 2, Article 467 of the CCU if the early termination of exclusive vested intellectual property rights to an invention, utility model, industrial design results in losses to the person authorized to use these items, such losses shall be compensated for by the person who gave a respective authorization unless otherwise provided for by the agreement or law; similar examples can be found in Part 2 of Article 477, Part 3 of Article 497 of the same regulatory instrument); b) obliging intellectual property provisions that establish some exceptions (for instance, according to Part 1, Article 443 of the CCU the work shall be used only with the consent of

the copyright proprietary or the other person authorized by them to give such a consent except when the law allows using this work without such a consent).

It is expedient to divide prohibiting intellectual property provisions into three subgroups: a) prohibiting intellectual property provisions that do not establish any terms and exceptions (for instance, according Part 3, Article 433 of the CCU, the copyright does not cover ideas, processes, methods of activities or mathematical concepts as such); b) prohibiting intellectual property provisions that establish some terms (for instance, according to Part 2, Article 442 of the CCU a work must not be published if it violates the rights of a person to privacy of their personal and family life, disturbs public order, causes harm to physical and mental health of the population); c) prohibiting intellectual property provisions that establish some exceptions. The last subgroup of prohibiting intellectual property provisions will be exemplified with the following provisions: Part 3, Article 418 (nobody may be deprived of or limited in exercising their intellectual property rights except when provided for by the law), Part 4, Article 423 (personal vested intellectual property rights may not be alienated (transferred) except when provided for by the law).

Intellectual property provisions serve: a) a regulatory function which means that they set rules of conduct, bring harmony to existing intellectual property relations. Serving a regulatory function, intellectual property provisions are applied to regulate rights and interests of holders of intellectual property rights, and generally accomplish the main purpose of intellectual property rights which is to direct intellectual property relations, put them within particular limits; b) an entitling function which mirrors a positive aspect of civil law influence seeking to set fundamental



principles of legal standing of holders of intellectual property rights, and ensure the legal contact between and among them. This function is served by the provisions establishing rights and positive requirements to persons in intellectual property relations; c) an encouraging function which means that they encourage holders of intellectual property rights to behave as prescribed by laws; d) a protective function which means that they seek to protect intellectual property rights and interests; e) a system-forming function which means that they ensure the harmonization of the requirements of the entire system of intellectual property rights, unity and interaction of the elements – intellectual property provisions.

This study should focus on atypical intellectual property provisions. It is reasonable to consider them to be authentic intellectual property rules introduced in the civil legislation (intellectual property provisions-objectives, intellectual property provisions-principles, intellectual property provisions-definitions, temporal intellectual property provisions, operative and conflicts of laws intellectual property provisions) which have a two-component structure (hypothesis and disposition) and do not establish any specific legal patterns of conduct for persons in intellectual property relations, and the functional potential of which in the mechanism for the legal regulation of intellectual property relations depends on a type of such intellectual property provisions.

It is expedient to treat the following intellectual property provisions as atypical: intellectual property provisions-objectives; intellectual property provisions-principles; intellectual property provisions-definitions; temporal intellectual property provisions; operative intellectual property provisions; conflicts of laws intellectual property provisions.

It is reasonable to describe intellectual property provisions-

objectives as expected (desired) results of harmonization of intellectual property relations set forth in legal regulations.

Intellectual property provisions-principles can be reasonably defined as fundamental ideas introduced in intellectual property provisions which help generate and serve the basis for intellectual property laws, help interpret the same and regulate intellectual property relations by analogy of law.

Intellectual property law, like the other branches (institutes) of civil law, shows the prevalence of the freedom of contract principle which can be found in general civil laws (Clause 3, Part 1, Article 3 of the CCU) as the parties may regulate their relations in intellectual property agreements, be free in concluding the same, choosing contractors and setting conditions which constitute the content thereof.

One of three moral and legal principles established in Clause 6, Part 1, Article 3 of the CCU is justice. The next principle embodied in civil provisions is good faith. Also, an important place in the system of moral and legal principles of the national intellectual property law is taken by reasonability. The good faith principle in the intellectual property law ensures the legal regulation of intellectual property relations based on the required objective mirroring of the reality, expedience, moderation, temperance, and prudence. It consists of the objective reality mirroring requirements, expedience, and prudence (compliance with common sense). The reasonability is required to ensure an objective interpretation of evaluation categories in intellectual property law. The required reasonability causes us to choose the means which will lead to the best effect in ensuring the interests of persons in intellectual property relations. It serves the basis for ensuring an objective interpretation of evaluation categories in intellectual property law: “significant impediments” (Part 2, Article 424 of the CCU), “significant importance” (Clause 5,



Part 2, Article 432 of the CCU), “in good faith” (Part 1, Article 470, Part 1, Article 480 of the CCU), “encourage in good faith” (Part 1, Article 484 of the CCU) etc.

Provisions-definitions in intellectual property law may be defined as the regulations which are compactly presented in the civil law instruments governing intellectual property relations and concisely and univocally determine the content of the intellectual property law categories by disclosing their identifying attributes.

Provisions-definitions in intellectual property law serve the following functions: they make the terms used in acts of civil legislation and related to intellectual property clear; these atypical intellectual property provisions save the substance of acts of civil legislation through concise disclosure of the meanings of intellectual property terms; these specialized intellectual property provisions integrate all the intellectual property provisions with their respective terms in a whole.

The CCU has the following intellectual property provisions-definitions: “intellectual property law” (Part 1, Article 418); “scientific discovery” (Part 1, Article 457), “previous user’s right” (Part 1 of Article 470, Part 1 of Article 480, Part 1 of Article 500), “efficiency proposal” (Part 1, Article 481), “trademark” (Part 1, Article 492), “trade secret” (Part 1, Article 505), “intellectual property licence” (Part 1, Article 1108), “licence agreement” (Part 1, Article 1109), “agreement on making to order and using intellectual property item” (Part 1, Article 1112), “agreement on transfer of exclusive vested intellectual property rights” (Part 1, Article 1113), “franchise agreement” (Part 1, Article 1115), “subfranchise agreement” (Part 1, Article 1119).

Article 1 of the Law of Ukraine “On Copyrights and Related Rights” [1] which is no longer valid since

31 December 2022 sets forth the following definitions: “author”, “audio-visual work”, “database (data compilation)”, “exclusive right”, “performer”, “video record maker”, “audio record maker”, “video record”, “playback”, “information on management of rights”, “author’s name”, “record (audio record, video record)”, “leasing out property”, “computer program”, “pirated copy of work, audio record, video record”, “publication (presentation in public) of work”, “publication of work, audio record, video record”, “organization of collective management (organization of collective management of property rights)”, “broadcasting organization”, “air broadcasting organization”, “cable broadcasting organization”, “derivative work”, “copy of work”, “copy of audio record”, “copy of video record”, “producer of audio-visual work”, “nickname”, “reprographic image (image)”, “dissemination of items protected by copyrights and (or) related rights”, “work for hire”, “public domain”, “piece of architecture”, “visual art work”, “piece of applied art”, “technical means of protection”, “institution”, “audio record”, “quotation”. It is worth mentioning here that the system of intellectual property provisions-definitions above was formed in the course of the development of legislation. Hence, Article 1 of this regulatory act was supplemented with: the term “public system for legal protection of intellectual property” according to the Law of Ukraine “Amendments to Some Regulatory Acts of Ukraine relating to Legal Protection of Intellectual Property” dated 22 May 2003 [4], and now it is used in the restated Law of Ukraine “Amendments to Some Laws of Ukraine relating to Establishment of National Intellectual Property Agency” dated 16 June 2020 [6]; the terms “audio description (audio descriptive commentary)”, “special digital format for blind, visually impaired and dyslexic





persons” according to the Law of Ukraine “Amendments to Some Laws of Ukraine as to Increasing Access of Blind, Visually Impaired and Dyslexic Persons to Works Published in Special Format” dated 25 December 2015 [5]; the terms “caricature”, “parody”, “potpourri” according to the Law of Ukraine “Amendments to Some Laws of Ukraine “On Copyrights and Related Rights” relating to Use of Copyrighted Items in Parodies, Potpourris, and Caricatures” dated 05 October 2016 [7]; the terms “website”, “webpage”, “website owner”, “webpage owner”, “hyperlink”, “electronic (digital) information”, “camcording”, “car sharing”, “account”, “hosting provider” according to the Law of Ukraine “State Support of Cinematography in Ukraine” dated 23 March 2017 [10]; the terms “cable re-broadcast”, “public performance”, “public demonstration of audio-visual work, video record”, “public showing”, “public notification (making public aware)” according to the Law of Ukraine “Effective Management of Right Holders’ Vested Rights in terms of Copyright and (or) Related Rights” dated 15 May 2018 [11]; the term “national intellectual property agency” according to the Law of Ukraine “Amendments to Some Laws of Ukraine relating to Establishment of National Intellectual Property Agency” dated 16 June 2020 [6].

The analysis of the provisions-definitions of the Ukrainian legislation and retro-legislation on copyrights and related rights leads to the following conclusions. First, some intellectual property provisions-definitions were not inherited by the new regulatory act (“electronic (digital) information”, “information on management of rights”, “leasing out property”, “cable re-broadcast”, “camcording”, “car sharing”, “pirated copy of work, audio record, video record”, “organization of collective management (organization of collective management of property rights)”, “hosting provider”, “copy of

work”, “copy of audio record”, “copy of video record”, “producer of audio-visual work”, “public demonstration of audio-visual work, video record”, “special digital format for blind, visually impaired and dyslexic persons”). Second, some provisions-definitions of the Ukrainian Laws “Copyrights and Related Rights” (the former and the applicable) are different by their meanings (here we mainly refer the following terms: “audio-visual work”, “webpage”, “performer”, “video record maker”, “audio record maker”, “video record”, “publication (presentation in public)”, “broadcasting organization”, “nickname”, “parody” (“parodic work”), “potpourri”, “reprographic image (image)”, “dissemination”). Third, the new Law of Ukraine “Copyrights and Related Rights” has some new intellectual property provisions-definitions (“performance”, “production of video records”, “production of audio records”, “performer’s name”, “interactive provision of access”, “authorised database user”, “authorised computer program user”, “caricature” (“caricatural work”), “copy”, “broadcast”, “music clip”, “work originality”, “pirated copy of work, audio record, video record”, “private copying”, “no-author work, no-author item protected by related rights”, “video record for hire”, “audio record for hire”, “performance for hire”).

Article 3 of the Law of Ukraine “Cinematography” [12] sets forth the following intellectual property provisions-definitions: “filmmaker”, “archival set of film’s source materials”, “film presenter”, “film producer”, “film production”, “film’s source materials”, “film demonstrator”, “film demonstration (public showing, public notification, and public demonstration)”, “public film fund”, “film dubbing”, “film storage”, “filming phase of film production”, “foreign subject of cinematography”, “cinema commission”, “editorial phase of film production”, “national film”, “sound-on-film”, “preparatory phase





of film production”, “entrepreneurial activities in cinematography”, “film producer”, “production system”, “film promotion”, “professional cinematographic activities”, “development of cinema project”, “film distribution”, “film distributor”, “doing director’s script”, “subject of cinematography”, “film subtitling”, “stage and production facilities for film production”, “film participant”, “film”, “film copy”.

Article 1 of the Law of Ukraine “Television and Radio” contains the following intellectual property provisions-definitions: “audio-visual information”, “audio-visual work”, “audio-visual (electronical) mass medium”, “multichannel TV network”, “house distribution network”, “program presenter (announcer)”, “own product of broadcasting organization”, “owner of broadcasting information entity”, “public TV and radio organization”, “public TV and radio organization”, “temporary broadcasting licence”, “broadcast time”, “TV channel”, “broadcasting channel”, “broadcasting channel of multichannel TV network”, “communal TV and radio organization”, “broadcasting licence”, “programme service provider’s licence”, “licensing requirements”, “licensee (licence holder)”, “broadcast licensing”, “logo (brandname, trademark)”, “broadcasting (television and radio broadcasting)”, “(TV or radio) broadcaster”, “broadcasting network”, “music clip”, “national audio-visual product”, “news (newscast)”, “multichannel TV network operator”, “programme pack”, “broadcast (telecast and radiocast)”, “programme service provider”, “wired network”, “programme (TV and radio programme)”, “programme service”, “programme concept of broadcasting”, “livestream”, “public company”, “radio broadcasting”, “re-broadcast”, “broadcast schedule of TV and radio organizations”, “broadcasting network”, “social TV and radio broadcasting”, “social TV and radio broadcasting of Ukraine”, “studio-producer

(independent producer)”, “sublease of broadcasting channel”, “television (TV broadcasting)”, “TV and radio organization”, “TV and radio journalist”, “TV and radio worker”, “technical means of broadcasting”, “temporary broadcasting”, “broadcasting (TV and radio broadcasting)”, “licence terms and conditions”, “universal programme service”.

Article 1 of the Law of Ukraine “Protection of Rights to Plant Varieties” contains the following intellectual property provisions-definitions: “variety author”, “parent components”, “botanical taxon”, “use of variety”, “holder of vested intellectual property rights to variety distribution”, “state register of plant varieties suitable for distribution in Ukraine”, “expert institution”, “subject of application”, “variety distribution”, “plant breeder”, “plant variety”.

As of today, Article 1 of the Law of Ukraine “Protection of Rights to Industrial Designs” contains the following intellectual property provisions-definitions: “National Intellectual Property Agency”, “industrial design”, “author”, “certificate”, “registered industrial design”, “application”, “applicant”, “application priority (priority)”, “priority date”, “public system of legal intellectual property protection”, “item”, “owner of industrial design”, “rights to industrial design”, “compound product”, “level of author’s freedom.” Most definitions stipulated in Article 1 of the abovementioned regulatory act were supplemented in accordance with the Law of Ukraine “Amendments to Some Regulatory Acts of Ukraine as to Enhancing Protection and Defence of Rights to Trademarks and Industrial Designs and Combating Patent Abuse” dated 21 July 2020 [8].

Article 1 of the Law of Ukraine “Protection of Rights to Topographies of Semiconductor Products” [13] stipulates the following intellectual property provisions-definitions: “author”,



“topography first use date”, “public system for legal protection of intellectual property”, “registered topographies”, “application”, “applicant”, “commercial use”, “topography of semiconductor product (topography)”, “semiconductor product”, “National Intellectual Property Agency”.

Temporal intellectual property provisions may be defined as the rules for calculating time periods in terms of intellectual property. It is important to figure out temporal issues within the mechanism for the civil regulation of intellectual property relations including the period start date (Part 1, Article 253 of the CCU), the period end date (Article 254 of the CCU), as well as the procedure for performing actions on the last day of the period (Part 1, Article 255 of the CCU).

It is expedient to define operative intellectual property provisions as provisions seeking to set the date when the regulatory act comes into force (changes, terminates), to spread it on a new range of intellectual property relations, over a new period. For example, Clause 2, Section IX of the Final Provisions of the Law of Ukraine “Protection of Rights to Plant Varieties” that came into force on 01 July 2002 establishes that within 5 years upon the entry of the abovementioned regulatory act into force the kinds and types of plant varieties covered by the variety owner’s rights may be restricted by the Cabinet of Ministers of Ukraine pursuant to the International Convention for Protection of New Varieties of Plants which Ukraine joined. There are many other examples of operative intellectual property provisions.

It is reasonable to define conflicts of laws intellectual property provisions as the provisions which shall apply if disparities arise between separate regulatory intellectual property acts as to the same subject of civil regulation, i.e. they are intellectual property provisions which regulate the choice of the intellectual property provision.

Part 2, Article 10 of the Civil Code of Ukraine states that if the valid international agreement entered into by Ukraine as required by the law contains the rules different from those established by the respective act of civil legislation, the rules of the respective international agreement entered into by Ukraine shall apply.

The analogous conflicts of laws intellectual property provisions can be found in the other regulatory intellectual property acts. Article 3 of the Law of Ukraine “On Protection of Rights to Industrial Designs” as amended in accordance with the Law of Ukraine “Amendments to Some Regulatory Acts of Ukraine as to Enhancing Protection and Defence of Rights to Trademarks and Industrial Designs and Combating Patent Abuse” dated 21 July 2020 contains the following conflicts of laws intellectual property provisions: if the international agreement entered into by Ukraine and approved by the Verkhovna Rada of Ukraine as binding sets the rules different from those stipulated in the Ukrainian laws on industrial designs, the rules of the international agreement shall apply.

The similar conflicts of laws intellectual property provision is stipulated in Article 4 of the Law of Ukraine “Protection of Rights to Plant Varieties” as amended by the Law of Ukraine “Amendments to Some Laws of Ukraine as to Bringing Ukrainian Laws on Seedlings and Sproutings in Compliance with European and International Provisions and Standards” dated 08 December 2015 [9].

The Law of Ukraine “Protection of Rights to Topographies of Semiconductor Products” was supplemented by Article 2¹ in accordance with the Law of Ukraine “Amendments to Some Regulatory Acts of Ukraine as to Enhancing Protection of Rights to Topographies of Semiconductor Products” dated 19 September 2019 [3]. It sets forth the following conflicts of laws intellectual property provision:



if the international agreement entered into by Ukraine and approved by the Verkhovna Rada of Ukraine as binding sets the rules different from those stipulated in the Ukrainian laws on topographies of semiconductor products, the rules of the international agreement shall apply.

Intellectual property relations may be self-regulated through entering into certain civil agreements, i.e. in contravention of acts of civil legislation. Intellectual property agreements may be both legally defined, and legally non-defined. In most practical cases, persons in civil relations enter into the following defined agreements: intellectual property licence agreement; licence agreement; agreement on making to order and using intellectual property item; agreement on transfer of exclusive vested intellectual property rights; franchise agreement; subfranchise agreement.

The next component of the mechanism for the legal regulation of intellectual property relations is jural facts that can be defined as the circumstances which result in emergence, change, termination, or renewal of intellectual property relations. According to Part 2, Article 11 of the CCU, the basis underlying the emergence of the civil rights and obligations is, inter alia, as follows: entering into agreements and other transactions; creating a literary work, fictional work, inventions, and other results of intellectual, creative activities; causing property (material) and moral damage to another person; other jural facts.

As the component of the mechanism for the legal regulation of intellectual property relations, jural facts serve the following functions: jural facts ensure the emergence of intellectual property relations; jural facts ensure the change of intellectual property relations; jural facts ensure the termination of intellectual property relations; jural facts ensure the renewal of intellectual property relations.

Another component of the mechanism for the legal regulation of intellectual property relations is intellectual property legal relations. It is reasonable to define them as personal non-property and property relations concerning a literary work, fictional work, other work, performance, audio record, video record, broadcasting organization's programme (show), scientific discovery, invention, utility model, industrial design, topography of a semiconductor product, efficiency proposal, plant variety, breed, commercial name, trademark, geographical indication and trade secret regulated by acts of civil legislation or in case of departure therefrom – by civil self-regulation tools. These legal relations include the following elements: a) holders of intellectual property rights; b) intellectual property items; c) substance.

The holders of intellectual property rights are specified in Part 1, Article 421 of the CCU. The legislators define the following holders of intellectual property rights: a creator (creators) of an intellectual property item (author, performer, inventor etc.) and other persons holding personal vested intellectual property rights and (or) intellectual non-property rights as provided for by the CCU, other law, or agreement.

Special regulatory acts specify the holders of copyrights; related rights; intellectual property rights to the invention, utility model, industrial design; intellectual property rights to the topography of a semiconductor product; intellectual property rights to the efficiency proposal; intellectual property rights to the variety of plants, breed; intellectual property rights to the trademark; intellectual property rights to the geographical indication. Thus, according to Article 435 of the CCU, the primary copyright holder shall be the author of the work (Part 1); the other physical and legal entities that acquired rights to the work pursuant





to the agreement or the law shall also be considered copyright proprietors (Part 2).

According to Article 435 of the CCU, the primary holders of related rights are a performer, audio record maker, video record maker, broadcasting organization. Unless it is proven otherwise, a person whose name is indicated in the audio record, video record, copies, or packaging thereof as well as during the broadcasting transmission process is considered a performer, audio record maker, video record maker, producer of the broadcast organization (transmission) programme (Part 1); the other persons that acquired such rights pursuant to the agreement or the law shall also be considered holders of related rights (Part 2).

Part 1 Article 463 of the CCU says that the holders of intellectual property rights to an invention, utility model, and industrial design are: 1) the inventor, author of an industrial design; 2) the other persons that acquired the rights to the invention, utility model, and industrial design pursuant to the agreement or the law.

According to Article 473 of the CCU, the holders of intellectual property rights to a topography of semiconductor product are: 1) the author of the topography of semiconductor product; 2) the other persons that acquired the rights to the topography of semiconductor product pursuant to the agreement or the law.

The holders of intellectual property rights to an efficiency proposal are the author of the proposal and the legal entity this proposal was made to (Part 1, Article 483 of the CCU).

Part 1, Article 486 of the CCU stipulates that the holders of intellectual property rights to a plant variety, breed are: 1) the author of the plant variety, breed; 2) the other persons that acquired the vested intellectual property rights to the plant variety, breed pursuant to the agreement or the law.

The holders of intellectual property rights to a trademark are physical and legal entities (Part 1, Article 493 of the CCU).

According to Part 1, Article 502 of the CCU, the holders of intellectual property rights to a geographical indication are goods producers, associations of producers, other entities as set forth by the law.

The intellectual property items are specified in Part 1, Article 420 of the CCU. The legislators refer the following to the intellectual property items: literary and fictional works; computer programs; data compilation (databases); performance; audio records, video records, broadcasting organizations' programmes; scientific discoveries; inventions, utility models, industrial designs; topographies of semiconductor products; efficiency proposals; plant varieties, breeds; commercial (trade) names, trademarks (marks for goods and services), geographical indications; trade secrets.

The law determines the items protected by copyrights and related rights. According to Part 1, Article 433 of the CCU the copyrighted items are works including: 1) literary and fictional works including novels, poems, articles and other pieces of writing; lectures, speeches, sermons, and other oral works; dramatic, musical and dramatic works, pantomimes, pieces of choreography, other scenic pieces; musical compositions (with or without text); audio-visual works; paintings, pieces of architecture, works of sculpture, and pieces of graphics; photographic works; pieces of applied art; illustrations, maps, plans, sketches, and figural works associated with geography, topography, architecture, and science; translations, adaptations, adaptations of musical compositions and other adaptations of literary and fictional works; collections of works if they are the results of intellectual activity by the selection or arrangement of their components; 2) computer programs;





3) data compilations (databases) if they are the results of intellectual activity by the selection or arrangement of their components; 4) other works.

The items protected by related rights, without doing any formalities as to these items and irrespective of their intended use, content, value etc. as well as the way and form of their presentation, are as follows: a) performances; b) audio records; c) video records; d) broadcasting organizations' programmes (shows) (Part 1, Article 449 of the CCU).

The subjective rights and obligations of the persons in international property relations constitute the substance of international property relations.

The Ukrainian legislators put personal intellectual non-property rights first. The second place in the system of international property relations is taken by vested intellectual property rights. According to Part 1, Article 1 of the CCU, these civil relations are based on legal equality, free will, property autonomy of the persons in intellectual property relations.

Intellectual property relations serve the following functions: 1) they determine a specific range of subjects of civil relations currently covered by intellectual property provisions (intellectual property agreements); 2) they establish how subjects of civil relations shall behave when it comes to intellectual property; 3) they constitute the condition for the potential application of civil remedies in respect of intellectual property to secure subjective civil rights and obligations in terms of intellectual property.

The next component of the mechanism for the legal regulation of intellectual property relations are the actions seeking to ensure the protection of intellectual property rights and interests and fulfilment of intellectual property obligations. The actions seeking to ensure the protection of intellectual property rights and interests and fulfilment of intellectual property

obligations mean actual behaviour of participants in these civil relations.

The limits within which civil rights are exercised are specified in Article 13 of the CCU which is the fundamental legal act to regulate intellectual property relations. A person exercises their civil rights within the limits set for them in an agreement or acts of civil legislation (Part 1 Article 13). According to Part 2, Article 13 of the CCU, when exercising their rights, a person shall refrain from the actions which could violate the other persons' rights, cause harm to environment and cultural heritage. It is not allowed to perform actions seeking to cause harm to the other person and otherwise abuse the rights (Part 3 Article 13 of the CCU). Part 4, Article 13 of the CCU stipulates that, when exercising their civil rights, a person shall comply with social morality principles. The Ukrainian legislators also establish that if a person, when exercising their rights, fails to meet the requirements set in Parts 2-4, Article 13 of the CCU, the court may oblige them to stop abusing their rights and apply the other remedies as set forth by the law. The provisions above shall cover the intellectual property relations.

Protecting intellectual property rights and interests is associated with the exercise of abovementioned rights and fulfilment of obligations. It aims at removing existing impediments for exercising intellectual property rights by ensuring the fulfilment by the obliged entity of the legal obligations assigned thereto.

The list of defined remedies to protect civil rights and interest (the recognition of a right; the recognition of a transaction invalid; the termination of an action which violates a rights; the reinstatement of the status that existed before the violation; the enforcement of the obligation in kind; the change of legal relationship; the termination of legal relationship; the compensation for damages and other





methods of compensation for property damage; the compensation for moral (non-property) damage; the recognition of decisions, actions, or omissions of the governmental body, body of the Autonomous Republic of Crimea or municipal body, their officials and officers illegal) can be found in Part 2, Article 16 of the CCU.

The specific feature of the intellectual property protection is the specificity of jural facts the occurrence of which makes it possible to protect civil rights and interests, and the protection of subjective civil rights by the proper means of protection of such rights and interests. Defending intellectual property rights in court is one of most wide-spread jurisdictional forms of intellectual property protection. In cases and in accordance with the procedure established by the law the court may decide (Part 2, Article 432 of the CCU).

Conclusions. The mechanism for the legal regulation of intellectual property relations is the set of civil law tools (means, ways, and forms) the coordinated interaction of which can bring harmony to intellectual property relations to protect interests of persons at intellectual property law (private interests), and social and public interests (public interests).

It is comprised of intellectual property provisions, intellectual property agreements; jural facts; intellectual property legal relations; actions seeking to ensure that the intellectual property rights and interests are exercised and met respectively, and intellectual property obligations are fulfilled; legal consciousness; legal culture.

The study seeks to develop a theoretical concept of the mechanism for the legal regulation of intellectual property relations in Ukraine. The combination of system and structural and functional analyses allowed: determining the structure of the mechanism for the legal regulation of intellectual property

relations; determining the functions of the components comprising the mechanism for the legal regulation of intellectual property relations; classifying regulatory intellectual property provisions.

The formal and logical method helped develop several definitions (intellectual property provisions, intellectual property provisions as atypical: intellectual property provisions-objectives, intellectual property provisions-principles, intellectual property provisions-definitions, temporal intellectual property provisions, operative intellectual property provisions, conflicts of laws intellectual property provisions) and present scientific arguments for conclusions and suggestions by the subject of research. The sources of the legal regulation of intellectual property relations serve as the regulatory basis for this study. The legal regulation of intellectual property relations in Ukraine depends on its well-coordinated mechanism. However, it is impossible to understand its potential without deep research of all the components thereof. The mechanism for the legal regulation of intellectual property relations is the set of civil law tools (means, ways, and forms) the coordinated interaction of which can bring harmony to intellectual property relations to protect interests of persons at intellectual property law (private interests), and social and public interests (public interests). In Ukraine it is comprised of intellectual property provisions, intellectual property agreements; jural facts; intellectual property legal relations; actions seeking to ensure that the intellectual property rights and interests are exercised and met respectively, and intellectual property obligations are fulfilled; legal consciousness; legal culture.

Key words: mechanism for legal regulation, intellectual property provisions, intellectual property agreements, jural facts, intellectual property legal relations.





Чернега В. Механізм правового регулювання відносин інтелектуальної власності в Україні

Статтю присвячено механізму правового регулювання відносин інтелектуальної власності в Україні. Правове регулювання відносин інтелектуальної власності в Україні залежить від його злагодженого механізму. Однак зрозуміти його потенціал неможливо без глибокого дослідження всіх його елементів. Поєднання системного та структурно-функціонального аналізу дало змогу: визначити структуру механізму правового регулювання відносин інтелектуальної власності; визначити функції елементів механізму правового регулювання відносин інтелектуальної власності; розробити класифікацію регулятивних (уповноважувальних, зобов'язуючих та заборонних) норм права інтелектуальної власності. За допомогою формально-логічного методу розроблено низку дефініцій (норм права інтелектуальної власності, атипових норм права інтелектуальної власності: норм-цілей права інтелектуальної власності, норм-принципів права інтелектуальної власності, норм-дефініцій права інтелектуальної власності, темпоральних норм права інтелектуальної власності, оперативних та колізійних норм права інтелектуальної власності), а також забезпечено наукову аргументацію висновків і пропозицій за предметом дослідження. Нормативно-правову основу дослідження становлять джерела правового регулювання відносин інтелектуальної власності. Визначено, що механізмом правового регулювання відносин інтелектуальної власності є скупчення цивільно-правового інструментарію (засобів, способів і форм), злагоджена взаємодія якого спроможна впоряд-

кувати відносини інтелектуальної власності задля охорони інтересів суб'єктів права інтелектуальної власності (приватних інтересів), держави і суспільства (публічних інтересів). Виснововано, що до складників механізму правового регулювання відносин інтелектуальної власності належать: норми права інтелектуальної власності, договори у сфері інтелектуальної власності; юридичні факти; правовідносини інтелектуальної власності; акти здійснення і захисту прав та інтересів і виконання обов'язків у сфері інтелектуальної власності; правова свідомість; правова культура.

Ключові слова: механізм правового регулювання відносин інтелектуальної власності, норми права інтелектуальної власності, договори у сфері інтелектуальної власності, юридичні факти, правовідносини інтелектуальної власності.

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