

## NATURE OF INTELLECTUAL PROPERTY INSURANCE AND ITS ROLE IN MODERN ECONOMY

*Article is devoted to theoretical analysis of nature and mechanism of intellectual property insurance. Types of intellectual property relations and its role in public reproduction are investigated. Peculiarities of intellectual property relations are considered. Classification of intellectual property objects depending on their most essential features is analyzed. Different approaches to classification of intellectual property subjects are considered. Nature and preconditions of origin of intellectual property insurance are investigated. Goals and functions of intellectual property insurance are specified. Risks that related to disposal and commercialisation of intellectual property and connected with peculiarities of intellectual property objects and growing rate of intellectual property rights infringements are analyzed. Three groups of risks concerning disposal and commercialization of intellectual property objects are singled out: risks related to loss or abridgement of intellectual property rights; risks related to possible losses, contingencies and half-received profits connected with commercialization of intellectual property objects; risks of professional responsibility of participants of intellectual property market. On the basis of analysis of hands-on experience four types of intellectual property insurance are investigated: insurance of intellectual property rights; liability insurance of the intellectual property subjects; professional liability insurance of participants of intellectual property market; liability insurance of the contractors concerning intellectual property disposal. Factors that restrains development of intellectual property insurance in Ukraine are analyzed.*

**Keywords:** intellectual property relations, insurance, risk management, objects and subjects of intellectual property insurance, intellectual security.

**Introduction.** At the present stage of development of productive forces and formation of a postindustrial society, intellectual property relations turn from sphere of realisation of human potential to a basic source of social and economic development of the nation. Nowadays intellectual property relation transformed in important component of social and economic basis of a society, and objects of intellectual property turned into defining factor of a social reproduction.

Intellectual activity results being embodied in intellectual property objects turn in important components of intangible assets of the enterprise. Objects of intellectual property are used in different spheres of economic activities, provide manufacture of innovative products, promote development of sphere of services and increase profitability of enterprise activity. Besides, usage of intellectual property objects allows to increase and effectively utilize business reputations of enterprise, effectively administrate and develop intellectual capital of the enterprise.

At the same time, the openness of national economy under globalisation increases quantity of participants of intellectual property relations and forces enterprises to start economic rivalry with the foreign companies for national markets. In these conditions, usage of intellectual capital and effective commercialisation of intellectual property objects allow enterprises to support its competitiveness and keep steady position in the market. Simultaneously, practice testify growing rate of intellectual property rights infringements both in Ukraine, and in the European Union countries within last decade. The growing competition in the international markets creates preconditions for infringement by unfair businessmen of copyrights, related rights, industrial property rights, rights to individualization tools for the purpose of outlet expansion and greater profit reception. Besides, use of somebody else's intellectual product does not demand realisation of considerable expenses and, at the same time, allows to receive an additional revenue from trade in counterfeit goods. Thus, considering risks of application of administrative, financial or criminal sanctions and high profitability of counterfeit activity, a part of economic players dare on intellectual property rights infringement.

In our opinion, under formation of postindustrial society active utilisation of intellectual capital in economic activities forms one of primary factors of enterprise competitiveness. Thus, effective protection of intellectual property rights and

defence of intellectual capital of the enterprise forms main precondition of economic safety of enterprise and basis for preserving of its economic potential and outlet expansion. At the same time, for intellectual property subjects protection of intellectual property rights connected with additional expenses for representation and judicial protection of their interests in court and state authorities. In these conditions, usage of intellectual property insurance allow intellectual property subject to compensate losses related to intellectual property rights protection.

All of it causes necessity of the analysis of peculiarities of intellectual property and nature of intellectual property insurance for the purpose of intellectual security provision and maintenance of effective protection of the sole and property rights of subjects of intellectual activity, and also working out of effective strategy of intellectual security ensuring. Thus, the urgency of research of intellectual property insurance is defined by specificity of a postindustrial stage of civilization development which transforms the intellectual capital into a basic component of productive forces of a society.

Nature and theoretical principles of intellectual property relations realization have been considered in the economic and legal literature. The appropriate place in working out of this scientific research area belong to Sergeyev A., Svyatotsky O., Orlyuk O., Drobyazko V. and others. Mechanism and tasks of intellectual property insurance have been disclosed in scientific studies of M. Simensky, E. Osterberg, A. Tsyganov, J. Kumar, N. Parnami and others. At the same time, issues concerned research of preconditions of origin, economic functions of intellectual property insurance and problems of its development, in our opinion, remain partly undiscovered.

The purpose of the article consists in research of peculiarities of intellectual property objects and role of intellectual property in postindustrial society, in-depth analysis of primary types of intellectual property insurance, definition of preconditions of origin and economic functions of intellectual property insurance, consideration of problems of development of intellectual property insurance in Ukraine.

**Results.** It is necessary to investigate nature and peculiarities of intellectual property so as to define primary preconditions of origin of the respective form of insurance.

### **Peculiarities of intellectual property and its objects.**

Intellectual property relations are system of social and economic relations which arise concerning appropriation

and commercialisation of intellectual activity results. Commercialisation of intellectual activity results is a system of procedures concerning their introduction in economic overturn for the purpose of creation of the added value and generating of additional profit. Involvement of intellectual activity results in the sphere of relations of appropriation-alienation turns it to intellectual property objects. At the same time, in the process of commercialisation an intellectual property objects turns into major factor of production.

**In our opinion there are several types of intellectual property relations:**

- Relations of appropriation of intellectual activity results in the way authorised by a society;
- Relations of commercialisation which arise concerning introduction of intellectual property object in economic overturn for the purpose of profit reception;
- Relations of disposal of intellectual activity results which provide cession of intellectual property rights to other persons on different conditions and in different volume;
- Relations of possession which provide actual domination of the party to intellectual property relations over intellectual activity results that directly and indirectly is not connected with its use.

**It is necessary to notice that intellectual property characterized by several distinguishing features:**

- The intellectual property right is the sole right that arise from the law, and not from civil agreements;
- The intellectual property right is limited in time and space, that is protected during certain term and in certain territory;
- The overwhelming part of intellectual property objects demands the state registration for effective protection of corresponding intellectual property rights;
- Intellectual property objects are inexhaustible, that is they do not wear out and do not lose characteristics as a result of long use. At the same time, they are subject to an obsolescence and can lose an urgency as a result of scientific and technical progress;
- Intellectual property objects are non-material by the nature but stored on the material carrier;
- The property on intellectual property objects directly is not connected with the property on material objects in which they are embodied;
- As a result of non-material character intellectual property objects are inalienable, therefore within the limits of the order only intellectual property rights is alienated [1, p.146];
- Indispensable condition of granting of legal protection to intellectual property object is novelty (originality), and also their embodiment in the certain objective form;
- Intellectual property objects grow out of art, scientific, literary or technical intellectual activity of the person and consequently always have creative character [1, p.144];
- Intellectual property objects thanks to the non-material nature can be easily duplicated and consequently demand special legal, technical and organizational protection.

Considered above peculiarities of intellectual property transforms it into an especial kind of relations of the property to which it is difficult to apply traditional approaches of the political economic analysis. For this reason nowadays intellectual property relations represent a separate kind of relations of the property which is regulated by separate institution of civil law.

As it was marked above, under formation of a postindustrial society the intellectual property relations start to play defining role in a social production. In our opinion, it is connected with those functions, which carry out intellectual property relations (further – IPR) in public reproduction.

**First**, IPR provide distribution of results of a social production between all party to relations of appropriation of intellectual activity results: the subject of intellectual activity receives the income, the investor who puts means in commercialisation of intellectual property objects, receives percent on the invested capital, the state – receives tax revenues in the budget, the enterprise – receive the additional value created on the basis of use of the intellectual capital.

**Secondly**, IPR accelerates scientific and technical progress providing redistribution of a part of public product for benefit of creators of an intellectual product, stimulating them in such a way to the further intellectual activity.

**Thirdly**, IPR predetermine an innovative orientation of a social production and modernisation of economy on the ground of introduction of intellectual activity results in economic activities.

**Fourthly**, IPR modify class structure of a modern society therefore within the limits of economy the role of technocrats, representatives of branch of science and education who are engaged in intellectual activity, carriers of knowledge and creators of an intellectual product are significantly grows.

**Fifthly**, IPR carry out system function at the present stage of social production's evolution, they form basis of economic system, predetermine formation of the new factor of production – the intellectual capital, and provide formation of preconditions of transition of a society on a new postindustrial stage of development.

**Objects and subjects of intellectual property relation.**

It is necessary to notice that today, the legislation does not contain criteria of classification of intellectual property objects (further – IPO), and only defines them. According to Convention on creation of the World organisation of intellectual property signed in 1967, objects of intellectual property embrace [2]: literary, art and scientific products; execution, sound recordings, on-air broadcasting transfers; inventions in all fields of activity of the person; discoveries; industrial samples; trade marks, service marks, company names and commercial designations; protection against an unfair competition; all other rights which concern intellectual activity in industrial, scientific, literary and art spheres. At the same time, according to article 420 of the Civil code of Ukraine objects of intellectual property embrace: literary and works of art; computer programs; databases; execution; soundtracks, videogram, on-air broadcasting transfers; discoveries; inventions, utility models, industrial designs; configuration of integrated microcircuits; rational proposals; grades of plants, breeds of animals; commercial names, trade marks, geographical indications; trade secrets [3].

From our point of view, depending on its characteristics, which is based on the analysis of their most essential features, specificity of their protection, features of realization of property and sole rights, intellectual property objects could be divided on: copyright and relative rights objects, objects of industrial property, individualization tools, untraditional objects of intellectual property. After all individualization tools, objects of industrial property, copyrights and relative rights objects own important patrimonial features.

**Objects of copyrights and relative rights** embraces literary works and works of art, computer programs, execution, soundtrack, videogram, on-air broadcasting transfers. They belong to results of art-literary intellectual activity; registration of objects is not obligatory; property rights on noted objects are protected by the state during long term; copyright and relative rights extend only on the form of expression of intellectual activity result; a legal protection condition is originality, instead of novelty of product; protection is given irrespective of art level and art value of product.

**Objects of the industrial property** embraces inventions, utility models, industrial designs. They belong to results of scientific and technical intellectual activity of the person; their registration is obligatory; property rights on objects of the industrial property are protected by the state during rather short term; they should be suitable to use in the industry or other branch of manufacture; they form the basic part of intangible assets of the enterprises; objects of the industrial property can be embodied in plane or volume forms, products or processes.

**Individualization tools** embraces commercial names, trade marks, geographical indications. In direct understanding individualization tools do not belong to results of intellectual activity as their value is defined not by a creative contribution of author, art or a product technological level, but depend on business reputation of the enterprise or region; their registration mainly is obligatory; property rights on individualization tools are continuously protected by the state; the intellectual property right on noted objects does not provide non-property right; they reduce uncertainty and carry out information function.

**To untraditional IPO can be referred:** scientific discoveries, rational proposal, grades of plants and breed of animals, trade secrets, know-how, configuration of integrated microcircuits. **In our opinion, separate untraditional IPO – scientific discovery, rational proposal, trade secret, know-how, can be attributed to separate group of incorporeal objects.** Noted objects, in a counterbalance to configuration of integrated microcircuits or selection achievement, represent the information in the pure state, they can concern any field of activity, do not demand registration and do not provide reception of any certificates.

Party to relations of intellectual property (further – subjects of intellectual property – SIP) take part in relations concerning disposal of intellectual activity results. Active development of intellectual property relations predetermines attraction to participation in this relations growing quantities of economic subjects. Therefore necessity of profound discovery of a circle of participants of intellectual property relations does not lose an urgency.

In our opinion, subjects of intellectual property are physical and legal bodies who directly or indirectly take part in process of disposal and commercialisation of intellectual activity results, and also provided with corresponding rights and commitments within the limits of civil-law relations of intellectual property.

**Depending on their role in intellectual property relations subjects can be divided into four groups:** 1. Subjects that are initially provided with intellectual property rights thanks to direct participation in creation of intellectual property object (first of all it concerns objects of copyright, relative rights and industrial property); 2. Subjects that are initially provided with intellectual property rights due to passage of registration procedure and reception of the corresponding certificate (it concerns individualization tools which usually registered on legal bodies and literally does not grow out of intellectual activity); 3. Subjects that provided with intellectual property rights as a result of inheritance or contract execution; 4. Subjects that represent interests of subjects of the two first groups or carrying out mediatory functions or acting as professional participants of intellectual property market; 5. Official bodies and the arbitrary organisations which regulate intellectual property relations.

It is necessary to notice that in the scientific literature is widespread the division of all intellectual property subjects on primary and secondary depending on the way of appropriation of intellectual property right [4, p.13]. To primary subjects referred authors of science works, works of literature and art, executors, manufacturers of soundtracks,

videogram, programs of on-air broadcasting, inventors, authors of the utility models, industrial designs, configurations of integrated microcircuits, grades of plants, breeds of animals. To secondary subjects referred assignees and successors who get intellectual property rights on the basis of the contract execution or inheritance. In our opinion, the given classification is ill-posed, after all is based on the assumption that subjects of intellectual property relations are only owners of corresponding property and non-property sole rights. The given approach to understanding of subject structure of intellectual property relations narrows a circle of participants of intellectual property relations and does not consider subjects who carry out regulating and mediatory functions in the intellectual property market. Besides, being based on the definition of primary subjects of intellectual property given above, it is impossible to refer owners of individualization tools to whom concept "author" cannot be applied during to specificity of nature of trademark, geographical indications and other individualization tools. At the same time, the classification of SIP on 5 groups covers all participants of intellectual property relations. Besides, primary SIP for individualization tools singled out in separate group which considers specificity of trade marks, geographical indications and company names as tools of individualization which reduce uncertainty, carry out information function and in direct understanding do not belong to intellectual activity results.

**Beside the approach considered above it is important to pay attention to classification of SIP depending on their economic functions.** In our opinion, in this context it is necessary to single out three groups of SIP:

1. Institutional subjects that take direct participation in creation of intellectual property objects (objects of copyright, related rights or industrial property) or carry out primary registration of intellectual property rights on individualization tools. Noted subjects create object of intellectual property relations, constituting the market of intellectual property and forming institutional basis of existence of intellectual property relations. 2. Economically active subjects that take direct participation in commercialisation of intellectual property objects, that is carry out their introduction in economic overturn for the purpose of profit reception. To the given group mainly belong legal bodies who transform objects of intellectual property into the intellectual capital which takes part in a social reproduction and provides profit reception. Economically active subjects take up risks of commercialisation of intellectual property objects, provide production with use of objects of intellectual property, create innovative products and provide redistribution of a part of income for benefit of institutional subjects, stimulating them in such a way to the further intellectual activity. 3. Financial institutions which carry out mobilisation of financial resources of the separated small owners of the capital and their transformation in the investment into the intellectual capital, creating in such a way material basis for commercialisation of intellectual activity results. Mediate transactions of economic agents and providing movement of financial resources, financial institutions carry out accumulation of free financial resources of the separated owners of the capital by issue and sale of own financial assets, and then invest them in the financial instruments issues by economically active subjects of intellectual property relations. It is necessary to notice that in modern conditions the role of financial institutions in the intellectual property market is defining. After all the considerable part of projects of IPO commercialisation is characterised as unsecured, and the enterprises which are engaged in intellectual activity constantly feel deficiency of own financial resources. Therefore financial institutions under intellectual property relations form

the financial mechanism of commercialisation of intellectual property results, accelerating economic overturn of the intellectual capital and providing preconditions for transformation of intellectual product in a flows of incomes.

#### **Nature of intellectual property insurance and preconditions of its origin.**

As it was noted above, over the last 10 years the quantity of intellectual property rights infringements has dramatically grown up. In particular, in Ukraine during second half of 2013 has been exposed over 2,1 thousand infringements of intellectual property rights. In the European Union growing rate of intellectual property rights infringements also is observed. In EU the number of applications for action committed by intellectual property's right-holders constantly increased, from 1.671 in 2002 to 23.134 in 2012. Also number of cases opened by EU Customs in consideration of intellectual property rights infringement increased, from 7.553 in 2002 to 90.473 in 2012 [5, p.9-11]. In noted circumstances, effective protection of intellectual property rights and defence of intellectual capital of the enterprise forms main precondition of economic security of enterprise and basis for preserving of its economic potential and provision of its global competitiveness.

For intellectual property subjects protection of intellectual property rights connected with additional expenses for representation and judicial protection of their interests in court and state authorities. In these conditions, usage of intellectual property insurance allow intellectual property subject to compensate losses related to intellectual property rights protection. Thus, commercialisation of intellectual property related to additional risks connected with peculiarities of intellectual property and growing rate of intellectual property rights infringements. That is why acquisition, disposal and economic overturn of intellectual property should always be coupled to application of respective forms insurance services.

#### **In our opinion, there are following preconditions of origin and development of IP insurance:**

- Growing number of infringements of IP rights in the world;
- Competition activation in the international markets related to globalisation of world economic communications which stimulates corporations to use active strategy of IP rights protection as instrument of competitive activity;
- Transformation of IP objects into the basic component of capital of enterprises in consequence of postindustrial society formation;
- Tremendous role of intellectual security in provision of a steady position of enterprises in globalized markets;
- Specific characteristics of IP objects which raise riskiness of their economic overturn and commercialization;
- Exclusive character of IP right which predetermines its limitation in space owing to what the right to similar intellectual activity results in different countries can belong to different subjects;
- Property right on considerable part of intellectual activity results accrue only after passing registration procedure thanks to what risks of investments into development of new innovative products are grow.

As it is known, there are several objects of insurance: valuable interests related to ownership, using and disposal of property; an obligation to compensate the harm done to the third parties; risks of entrepreneurial activity. Risk should correspond to following conditions to become insurable [6, p.13]:

- Risk should possess casual character, and time of its realization should be not known;

- There should be a possibility of estimation of probability of risk realization and valuation of probable losses from risk realization.

Thus, insurance is provided, when the probability of insured event can be estimated. Estimation of risk probability should be based on the statistical data. Absence of such data can complicate or make impossible an estimation of risk probability and financial consequences of insured event. Risks related to realization of IP relations and commercialization of IP objects completely correspond to these criteria. Thus, they could be an object of insurance protection without any doubts.

#### **From our point of view, risks of use and commercialization of IP objects can be divided into three groups:**

1. Risks related to loss or abridgement of intellectual property rights:

- Risks of loss of the intellectual property rights;
- Risks of abridgement of intellectual property rights;
- Risks of divulgation of the commercial information concerning intellectual property objects;

2. Risks related to possible losses, contingencies and half-received profits connected with commercialization of IP objects [7, p.32]:

- Risks connected with counterfeit production, including the half-received profit and costs for prosecution of infringers;
- Risk to be prosecuted by third parties for IP rights infringement;
- Risks connected with blocking entrance to regional markets owing to the fact that IP rights belong to third parties;
- Risks related to necessity of the conclusion of license agreement when IP rights on produced goods belong to third parties;
- Financial risks connected with license agreements, for example refusal of transfer of royalties, including the half-received profit and costs for prosecution of infringers;
- Risks related to stop of the economic activities of company due to legal action connected with IP rights infringement;

3. Risks of professional responsibility of participants of intellectual property market:

- Risks of professional responsibility of experts which carry out formal and qualified examination of intellectual property objects;
- Risks of professional responsibility of patent attorney which form and submit on behalf of the principal documents on registration of intellectual property rights;
- Risks of professional responsibility of appraisers of intellectual property rights.

**Intellectual property insurance** is a system of economic relations concerning protection of valuable interests of intellectual property subjects in case of insured event occurring provided at the expense of the monetary funds formed by insurers from paid insurance premiums. IP insurance used by IP subjects to hedge against risk of a uncertain loss related to IP objects commercialization.

**The purpose of IP insurance** is protection of valuable interests of participants of economic relations concerning assignment and commercialisation of intellectual activity results that increase level of intellectual safety of enterprises.

#### **The primary goals of IP insurance, in our opinion, are:**

- Reimbursement of insured person in case of insured event occurred in the sphere of intellectual property relations;
- Financing of process of commercialization of IP objects at the expense of insurance fund;

- Stimulation of development IP market at the basis of reduction of riskiness of disposal and commercialization of intellectual activity results;

- Prevention of IP rights infringements and increase of effectiveness of intellectual capital management system;
- Decrease of transaction costs in intellectual property market.

***Nature and tasks of IP insurance are implemented in its economic functions:***

1. Stimulation. Insurance promotes development of IP market of intellectual property at the basis of reduction of transaction costs, decrease in riskiness and increase of commercial appeal of IP commercialisation.

2. Accumulation. Insurer consolidate insurance premiums and form special insurance fund which can be used for protection of valuable interests of insured persons in case of insured event occurring, and also for investment in various financial assets.

3. Compensation of risks. Insurance provides a covering of losses of the insured person which have resulted from insured event occurring and are connected with realization of IP relations.

4. Risk management. Intellectual property insurance forms the effective mechanism of management of the risks concerned commercialization of IP objects, and significantly increase intellectual security of insured person.

5. Investment. Insurance reserves can be used by the insurer for acquisition of financial assets which provides redistribution of economic resources through financial market, meet demand of securities issuers, and also provides possibility of reception of income on the invested capital.

6. Control. The insurer performs constant control of activity of the insured person for the purpose of information asymmetry reduction and increase of accuracy of an estimation of probability of insured event occurrence, reduction of likelihood of losses concerning discrepancy of the size of an insurance premium to level of the insured risks.

7. Prevention. Insurer do all that he can to decrease moral risk, prevent occurrence of insured event or minimize losses from insured event occurrence. Insurer use establish unconditional franchise and putting on the insured person an obligation to take measures concerning decrease risks connected with IP objects disposal or commercialization.

**Primary types of intellectual property insurance and their peculiarities.**

From our point of view, it is possible to single out four principal types of IP insurance at the basis of international experience investigation.

**1. Insurance of intellectual property rights** which provides protection of valuable interests of the insured person in case of loss of intellectual property right or reduction of intellectual property value owing to [7, p.37-38]:

- Improper execution of documents submitted for intellectual property right registration;
- Invalidity of documents submitted for intellectual property right registration;
- Losses of the right of a priority or closing of certain national markets because of improper execution of documents submitted for intellectual property right registration;
- Contest of intellectual property right by the third parties;
- Discrepancies of intellectual property object to conditions of protectability;
- Disability of the subject transferred intellectual property right to the current proprietor, because of existence of co-authors of intellectual property object;
- Divulgence of the confidential commercial information concerning intellectual property objects, transformation of intellectual activity result into public domain and impossibility of effective protection of intellectual property rights.

Insured event in case of insurance of IP rights is the fact of incurring losses in connection with loss, contest, depreciation of intellectual property rights or refusal in IP rights registration.

The key moment of insurance of IP rights is estimation of value of corresponding property rights and probability of insured events occurrence which allows to specify precisely size of an insurance premium. It is necessary to notice that, according to hands-on experience, if the insurance sum specified in the agreement, exceeds real value of IP rights, the agreement is avowed as nugatory in that part of the insurance sum which exceeds value of IP rights.

Besides, insurance rules stipulate an obligation of the insured person to report immediately to insurer about changes in the circumstances, reported to the insurer at contract formation if these changes can essentially affect increase in insurance risk: information concerning increase in probability of contest of IP rights by third parties; information concerning conclusion of license agreements; information concerning changes in attributes of protectability IP objects.

Insurance of IP rights provides reimbursement of insured person concerning the losses connected with:

- fee of the lawyer and a legal cost related to judicial protection of intellectual property rights;
- decrease in market value of IP objects owing to divulgation of the confidential information concerning intellectual property;
- loss of market value of IP objects owing to refusal in IP rights registration;
- half-received profits connected with commercialization of IP objects.

**2. Liability insurance of the intellectual property subjects.** While the previous kind of insurance concerns property insurance, the given kind of insurance provides insured person with compensation of legal cost relating to judicial disputes initiated by the third parties.

Protection of intellectual property rights is a component of a customs policy of each developed country in the world. Thus, goods which are produced or distributed with infringement of IP rights cannot be imported on territory of the corresponding country. Therefore, today one of the primary methods of competitive activity in the global markets is the aggressive policy of intellectual security when corporations actively use legal claims for pressure upon economic actors which, in their opinion, infringe their intellectual property right. Some corporation close certain national markets for goods of competitors in such way. An example is long patent war between Apple and Samsung.

In such conditions, liability insurance allows intellectual property subjects to reduce risks of application of an aggressive competitive policy by third parties and make it possible to compensate expenses connected with judicial protection of intellectual property rights.

**Liability insurance provides compensation of costs connected with:**

- Reception of consultations under legal questions;
- Fee of the lawyer on representation of interests of intellectual property subject in court and state authorities;
- Payment of court taxes and penalties;
- Fee of experts in the sphere of intellectual property right;
- Request of corresponding documents from state and public authorities required for judicial protection of interests of insured person.

Insured event in case of liability insurance of IP subjects is usual determined as fact of participation of the insurer in proceeding in connection with charge in infringement of intellectual property rights.

For reduction of moral risk and negative influence of information asymmetry insurers in the agreement of liability

insurance stipulates that insurance protection don't cover risks concerned with [8]:

- Renunciation of insured person of services of patent attorney or experts in sphere of intellectual property right without concurrence of insurer;
- Use by the insured person services of lawyers or experts which have no corresponding qualification and experience in sphere of protection of intellectual property rights without concurrence of insurer;
- Legal claims which the insured person bring against the third parties in connection with infringement of intellectual property rights, except the counter actions initiated after the concurrence of insurer;
- Legal claims brought against insured person under the order of the state or municipal authorities;
- Legal claims brought by third parties against employees or employers of the insured person.

**Important part of the agreement of liability insurance of IP subjects can be insurance of costs connected with compensation of a losses, suffered by the third parties owing to wrongful acts of the insured person.** In this case the size of an insurance premium and insurance compensation essentially increases, so long as the losses, suffered by the third parties are essentially bigger compared to a legal costs. Insured event in this case is usual determined as fact of causing by the insured person a damage to the third parties in connection with infringement of intellectual property rights belonging to them, and due to the activity stipulated by insurance agreement.

For the purpose of reduction of negative influence of information asymmetry, insurance usually cover costs of insured person connected with compensation of losses of third parties that was inflicted and brought an action throughout the period of validity of insurance agreement. For minimization of moral risk insurance agreement stipulate unconditional franchise.

Due to peculiarities of intellectual property, and also specificity of risks which accompany their commercialization, fast and imprudent insurance contract formation of can threaten the insurer with considerable losses in the future. For this reason the **conclusion of the insurance agreement concerning intellectual property is usual preceded by in-depth study of business reputation, economic activities and system of management of the insured person.** Preliminary research of the insured person has for an object an estimation of probability insured event occurrence and valuation of the size of possible losses from its occurrence. For preliminary profound studying of the insured person insurer can involve patent attorneys, specialists in intellectual property right, professional appraisers of intellectual property, experts in the sphere of intellectual security [7, p.50].

**Besides, terms of the insurance agreement could stipulate the obligation of the insured person to carry out preventive measures concerning decrease in level of the risks connected with disposal of intellectual property.** Among noted measures could be singled out:

- Complete legal protection of IP objects;
- Intellectual security ensuring;
- Profound patent research for the purpose of estimation of protectability of IP objects and their commercial potential;
- Revision of license agreement and other documentation of the insured person to meet the requirements of intellectual security;
- Research of the intellectual property market for the purpose of determination of a potential competitors and an estimation of probability of occurrence of counterfeit goods;

- Carrying out guidance of personnel of insured person for the purpose of ensuring of intellectual security and preserving of intellectual capital.

**3. Professional liability insurance of participants of intellectual property market** (patent agents, professional appraisers and experts). Always there is a probability of an inaccuracy, inadvertence or blunder during formal and qualified examination of intellectual property objects for compliance of protectability conditions; during formation and submission of documents on registration of intellectual property rights; during valuation of intellectual property. Committed by professional participants of intellectual property market errors cause losses for owners of intellectual property rights. Therefore, thee try to compensate losses, addressing in court. In these conditions, insurance of professional liability allows professional participants of intellectual property market to perform efficient control of risks connected with their activity.

**Insurance of professional liability of participants of IP market usually covers:**

**1. Risks of patent attorney which are connected with:**

- Mistakes committed during forming and submission on behalf of the principal documents on registration of intellectual property rights which have caused refusal in IP right registration or abridgement and depreciation of intellectual property rights;

- Unintentional divulgence of a confidential commercial information concerning intellectual property objects which have caused refusal in IP right registration or abridgement and depreciation of intellectual property rights;

- Unintentional loss or spoil of documents and other materials which have been given by the client to the patent attorney;

**2. Risks of professional experts which are connected with:**

- Mistakes committed during formal or qualified examination of intellectual property objects for compliance of protectability conditions which have caused refusal in IP right registration or abridgement and depreciation of intellectual property rights;

- Unintentional divulgence of a confidential commercial information concerning intellectual property objects received during examination which have caused abridgement and depreciation of intellectual property rights;

**3. Risks of professional appraisers which are connected with:**

- Mistakes committed during valuation of intellectual property objects which have caused overestimation or underestimation of IP objects and, accordingly, losses or half-received profit during intellectual property commercialization;

- Mistakes committed during valuation of intellectual property objects which have caused underestimation of IP objects and, accordingly, indebtedness to state budget concerning payment of taxes;

- Unintentional divulgence of a confidential commercial information concerning intellectual property objects received during valuation which have caused loss, abridgement, depreciation of intellectual property rights or half-received profit during intellectual property commercialization;

- Unintentional loss or spoil of documents and other materials which have been given by the client to the appraiser.

Among the widespread mistakes which appraiser can commit: insufficient taking into account of peculiarities of corresponding intellectual property objects; technical errors during valuation procedure; an incorrect estimation of risks and incorrect determination of the rate of discounting and rate of capitalization; application of an incorrect technique

of an estimation; incorrect forecasting of cash flows from IP commercialization.

Insured event in the case of professional liability insurance is usual determined as fact of losses caused to the third parties due to the professional activity stipulated by insurance agreement.

For the purpose of reduction of negative influence of information asymmetry, professional liability insurance usually cover costs of insured person connected with compensation of losses of third parties that was inflicted and brought an action throughout the period of validity of insurance agreement. On the other hand, there is a practice when professional liability insurance usually cover costs of insured person connected with compensation of losses of third parties that was only inflicted or only brought an action throughout the period of validity of insurance agreement [9, p.331-332].

**Professional liability insurance is usual provides compensation of costs connected with:**

- Obligation of the insured persons to compensate to the third parties the losses caused due to their professional activity owing to an inexact estimation or untimely execution of their obligations, including half-received incomes and expenses on elimination of drawbacks;
- Legal cost connected with representation and protection of interests of insured persons in court and state authorities;
- Payment of penalties owing to infringements in professional activity.

In most cases the insurance agreement also stipulate that in case the insured person has deliberately hidden the information on the mistakes committed during professional activity from the insurer, it forms a basis for refusal in payment of insurance compensation.

For reduction of moral risk and negative influence of information asymmetry insurers in the agreement of professional liability insurance stipulates that insurance protection don't cover risks concerned with :

- Compensation of a moral damage or the harm caused to business reputation of the third parties owing to professional activity of the insured person;
- Deliberate actions of the insured person during professional activity;
- Act of God circumstances;
- Activity of state authorities (confiscation of documents, temporary suspension of license).

Thus, professional liability insurance allows professional participants of the intellectual property market to reduce risks connected with their activity, rise commercial appeal of their activity and also promotes development of an infrastructure of intellectual property market. Therefore in the separate countries, for an example in the Russian Federation, appraisers as professional participants of intellectual property market are forbidden to be engaged in professional activity without formation of agreement of professional liability insurance.

**4. Liability insurance of the contractors concerning intellectual property rights disposal.** The primary forms of commercialization of intellectual activity results are contractual forms: assignment of IP rights; licensing of IP rights; investment of IP rights in authorized capital of the enterprise. Thus always there is a risk of opportunistic behaviour, that is refusal of one of the contractors from accomplishment of terms of agreement for the purpose of reception of additional benefits. Thus, liability insurance of the contractors concerning intellectual property rights disposal plays extremely important role in commercialization of intellectual activity results and promotes protection of valuable interests of subjects of commercialization process.

**Liability insurance of contractors concerning intellectual property rights disposal is usually provides compensation of costs connected with:**

- Untimely or incomplete payment of the royalties or other payments stipulated by agreement;
- Divulgence of a confidential commercial information concerning intellectual property objects received according to terms of agreement;
- Breach of contract which has caused losses or half-received profit during intellectual property commercialization;
- Legal cost connected with representation and protection of interests of insured persons in court and state authorities.

Insured event in the case of liability insurance of contractors usually determined as fact of non-execution or improper execution of a contract concerning intellectual property rights disposal which caused losses to insured person.

As well as in case of other kinds of intellectual property insurance, liability insurance of contractors usually preceded by technological and financial audit, and also in-depth study of business reputation, economic activities and system of management of the insured person. Preliminary research of the insured person has for an object an estimation of probability of insured event occurrence and valuation of the size of possible losses from its occurrence.

**For reduction of negative influence of information asymmetry insurers in the agreement of liability insurance of contractors stipulates that insurance protection don't cover risks concerned with:**

- Compensation of a moral damage or the harm caused to business reputation of the insured person owing to insured event occurrence;
- Deliberate actions of the insured person during their activity stipulated by terms of contract;
- Act of God circumstances;
- Activity of state authorities (confiscation of documents, temporary suspension of license).

Thus, existence of different types of intellectual property insurance creates preconditions for development of the market of intellectual activity results, allows economic actors to manage the risks connected with commercialization of intellectual property, and also ensure postindustrial society formation owing to increase in commercial appeal of introduction of the intellectual capital in social reproduction.

**Conclusion.** Summing up research it is necessary to notice that relations of intellectual property under formation of a postindustrial society form an important component of basis of economic system and carry out stimulating, distributive, system and innovative functions within the framework of a public reproduction. Besides, active utilization of intellectual capital in economic activities forms one of primary factors of enterprise competitiveness.

We discovered nature and peculiarities of intellectual property, analyzed classification of intellectual property objects. Different approaches to classification of intellectual property subject have been considered: depending on their role in relations of intellectual property and depending on their economic functions, which allow to consider their role in the process of commercialization of IP objects.

There was considered nature, preconditions of origin and goals of IP insurance. Also, we specified functions of intellectual property insurance, and singled out three groups of risks concerning disposal and commercialization of intellectual property objects.

On the basis of the carried out analysis of hands-on experience we singled out 4 types of IP insurance: Insurance of intellectual property rights; Liability insurance of the intellectual property subjects; Professional liability insurance of participants of intellectual property market; Liability

insurance of the contractors concerning intellectual property disposal.

We had been proved that commercialisation of intellectual property related to additional risks connected with peculiarities of IP objects and growing rate of intellectual property rights infringements. That is why acquisition, disposal and economic overturn of intellectual property should always be coupled with application of respective forms insurance services.

In Ukraine IP insurance development acquires an especial topicality as can decrease risks of intellectual activity results commercialization, and increase appeal of investments in intellectual capital. Active development of sphere of services and transformation of intellectual capital into basic factor of production are fundamental attribute of a postindustrial society. Thus, forming of IP insurance system in Ukraine turns to the important task of the state economic policy. Unfortunately, development of IP insurance in Ukraine restrains variety of factors.

Firstly, low efficiency of IP rights protection in Ukraine coupled with significant number of IP rights infringements considerably raise riskiness of business operations with intellectual activities results. Thereby, insurer cannot compensate properly the expenses related to granting of insurance services at the expense of use of right of recourse or subrogation. Besides, it increases cost of insurance services and reduces a market demand for such services.

Secondly, complexity of an estimation of IP objects value and absence of universal techniques of valuation of the given objects raises riskiness of business operations with intellectual activities results, increase cost of IP insurance services and forces insurers to concern with care this type of insurance services.

Thirdly, Ukrainian economy has industrial basis and primary property objects in Ukraine are tangible assets. Thereof, Ukrainian enterprises are not inclined to invest in intellectual capital, and share of IP objects in structure of domestic enterprises capital remains insignificant. It considerably reduces demand for IP insurance services.

Fourthly, Ukrainian insurance companies have no appropriate experience in sphere of IP insurance. They are

characterized by insufficient capitalization and under high market volatility and instability of national economy they are not inclined to increase riskiness of insurance portfolio providing services of IP insurance.

Thus, forming of effective system of IP insurance in Ukraine restrained by both demand factors, and supply factors. Therefore, without appropriate state support prospect of IP insurance development in Ukraine remain doubtful.

The topicality of a problem of effective institutional regulation of intellectual property relations, protection of intellectual property rights, creation of preconditions for effective commercialisation of intellectual activity results testify objective necessity of the further theoretical and practical research of functions and mechanism of intellectual property insurance. It is necessary to analyze approaches to effective risk management of intellectual property commercialization, methods of intellectual property objects valuation, and activity of professional participants of intellectual property. Thus, urgency of carrying out of the further researches for the given direction does not raise the doubts.

#### References

1. Bazylevych V.D. Intellectual property [text] / V.D. Bazylevych. – third edition – Kyiv: Znanna, 2014. – 671 p.
2. Convention Establishing the World Intellectual Property Organization [On-line] // World Intellectual Property Organization: [web-page]. – Access at: [http://wipo.int/treaties/en/text.jsp?file\\_id=283854#P50\\_1504](http://wipo.int/treaties/en/text.jsp?file_id=283854#P50_1504).
3. Civil Code of Ukraine [On-line] // Supreme Council of Ukraine: [web-page]. – Access at: <http://zakon1.rada.gov.ua/laws/show/435-15>.
4. Mironenko N. Nature of intellectual property subjects and criteria of their classification / N. Mironenko // Theory and practice of intellectual property, 2009. – Vol.2. – P. 11-24.
5. European Commission. Report on EU customs enforcement of IPR (2012). – Luxembourg: Publications Office of the European Union, 2013. – 40 p.
6. Bazylevych V.D., Bazylevych K.S. Insurance [text] / V.D. Bazylevych, K.S. Bazylevych. – sixth edition – Kyiv: Znanna, 2008. – 351 p.
7. Tsyganov A.A. Fundamentals of intellectual property insurance [text] / A.A. Tsyganov. – Moscow: Ankil, 2006. – 136 p.
8. Kumar J., Pamami N. The Marriages of Intellectual Property and Insurance [On-line] // University Library of Munich: [web-page]. – Access at: <http://mpira.ub.uni-muenchen.de/11465>. (DOI: <http://dx.doi.org/10.2139/ssrn.1289187>)
9. Simensky M., Osterberg E. The Insurance And Management Of Intellectual Property Risks / M. Simensky, E. Osterberg // Cardozo Arts & Entertainment Law Journal, 1999. – Vol.17. – P. 321-343.

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### СУТНІСТЬ СТРАХУВАННЯ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ ТА ЙОГО РОЛЬ В СУЧАСНІЙ ЕКОНОМІЦІ

*Стаття присвячена теоретичному аналізу сутності та механізму страхування інтелектуальної власності. Досліджено зміст та особливості відносин інтелектуальної власності та їх роль у суспільному відтворенні. Розглянуто класифікацію об'єктів та суб'єктів інтелектуальної власності. Проаналізовано сутність, завдання та функції страхування інтелектуальної власності. Визначено передумови виникнення страхування інтелектуальної власності, а також охарактеризовано ризики розпорядження правами інтелектуальної власності та комерціалізації результатів інтелектуальної діяльності, що підлягають страхуванню. Досліджено основні види страхування інтелектуальної власності та проаналізовано проблеми його розвитку в Україні.*

*Ключові слова: відносини інтелектуальної власності, страхування, ризик-менеджмент, об'єкти та суб'єкти страхування інтелектуальної власності, інтелектуальна безпека.*

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### СУЩНОСТЬ СТРАХОВАНИЯ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ И ЕГО РОЛЬ В СОВРЕМЕННОЙ ЭКОНОМИКЕ

*Статья посвящена теоретическому анализу сущности и механизма страхования интеллектуальной собственности. Исследовано содержание и особенности отношений интеллектуальной собственности и их роль в общественном воспроизводстве. Рассмотрена классификация объектов и субъектов интеллектуальной собственности. Проанализирована сущность, задания и функции страхования интеллектуальной собственности. Определены предпосылки возникновения страхования интеллектуальной собственности, а также охарактеризованы риски распоряжения правами интеллектуальной собственности и комерциализации результатов интеллектуальной деятельности, которые подлежат страхованию. Исследованы основные виды страхования интеллектуальной собственности и проанализированы проблемы его развития в Украине.*

*Ключевые слова: отношения интеллектуальной собственности, страхование, риск-менеджмент, объекты и субъекты страхования интеллектуальной собственности, интеллектуальная безопасность.*