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### ІНТЕГРАЦІЙНІ І МЕРЕЖЕВІ МЕХАНІЗМИ АКТИВІЗАЦІЇ НАУКОВО-ІННОВАЦІЙНОЇ ДІЯЛЬНОСТІ В СИСТЕМІ ВИЩОЇ ОСВІТИ КАЗАХСТАНУ

*У статті розглянуто теоретичні та практичні питання розвитку на сучасному етапі інтеграційних форм мережевої взаємодії університетів в інноваційній сфері. Встановлено, що участь Карагандинського економічного університету Казпотребсоюза в мережевих освітніх та наукових консорціумах дозволяє значно розширити коло партнерів і спектр можливостей для активізації науково-інноваційної діяльності в перспективі.*

*Ключові слова: науково-інноваційний потенціал університету, інтеграція науки і вищої освіти, мережевий університет.*

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### ИНТЕГРАЦИОННЫЕ И СЕТЕВЫЕ МЕХАНИЗМЫ АКТИВИЗАЦИИ НАУЧНО-ИННОВАЦИОННОЙ ДЕЯТЕЛЬНОСТИ В СИСТЕМЕ ВЫСШЕГО ОБРАЗОВАНИЯ КАЗАХСТАНА

*В статье рассмотрены теоретические и практические вопросы развития на современном этапе интеграционных форм сетевого взаимодействия университетов в инновационной сфере. Установлено, что участие Карагандинского экономического университета Казпотребсоюза в сетевых образовательных и научных консорциумах позволяет значительно расширить круг партнеров и спектр возможностей для активизации научно-инновационной деятельности в перспективе.*

*Ключевые слова: научно-инновационный потенциал университета, интеграция науки и высшего образования, сетевой университет.*

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### NATURE OF INTELLECTUAL PROPERTY RELATIONS AND ITS ROLE IN A PUBLIC REPRODUCTION

*Article is devoted to theoretical analysis of nature and structure of intellectual property relations. Types of intellectual property relations and its role in public reproduction are investigated. Peculiarities of intellectual property relations are considered. Two groups of approaches to classification of intellectual property objects are analysed: classification of objects depending on its characteristics which is based on the analysis of their most essential features, specificity of their protection, features of realisation of the property and non-property rights; classification on the basis of various minor criterions which do not reveal nature and character of objects but at the same time allow to divide them into groups according to concrete tasks of research. Necessity of defining of incorporeal objects of intellectual property which cannot be labelled as objects of copyright, industrial property or branding tools is proved. Criteria of classification of party's to intellectual property relations are investigated. The subject structure of intellectual property relations according to the legislation of Ukraine is defined. New approaches to classification of party's to intellectual property relations depending on their role in relations of intellectual property and their economic functions are offered, which allow to embrace as much as possible all participants of intellectual property relations, consider their role in the process of commercialisation, and draw attention to subjects which carry out regulating and mediatorial functions on the intellectual property market.*

*Keywords: intellectual property relations, classification, objects and subjects of intellectual property, copyright, industrial property.*

**Introduction.** Property relations form basis of any economic system, providing possibility of realisation of economic interests of the owner in social production, and also forming the mechanism of distribution of its results. While the essence of the property was investigated by Aristotle in IV c. BC, intellectual property relations has turned to object of scientific researches only in XVIII c. Nowadays scientific discussions arise among researchers concerning structure of intellectual property objects, rating different results of intellectual activity as intellectual property objects, and also concerning division of party to intellectual property relations into groups by different criteria.

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. In particular, according to the World organisation of intellectual property in 2011 the contribution of intellectual property branches to GDP of the USA was over 1 billion. That in 7 times exceeds a current CDP of Ukraine.

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. Genesis, development, complication and a variety of intellectual activity occurred together with evolution of a human civilisation. Lately under formation of a postindustrial society an intellectual property relation turned to an important component of social and economic basis of a society, and objects of intellectual property turned into defining factor of a social reproduction.

During the Middle Ages intellectual activity was considered only as realisation of creative and a mental potential of the person, means of creation of a variety of leisure of the person and cultural life of a society. Besides, the sphere of services where the basic role belonged to intellectual activity, was considered unproductive in economic sense. In XX c. when the sphere of non-material production gradually starts to prevail over production of goods under the contribution to gross national product, and the share of

the intellectual capital in structure of activities of the enterprise incessantly grows, intellectual activity has received considerable stimulus to development, and together with it the nomenclature of intellectual property objects essentially extended. All of it causes necessity of the analysis of peculiarities of different objects and subjects of intellectual property, their division into groups for the purpose of maintenance of effective protection of the property and non-property rights of subjects of intellectual activity, and also working out of effective mechanisms of commercialisation of different intellectual property objects of. Thus, the urgency of research of intellectual property relations 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.

The maintenance and the basic theoretical principles of intellectual property have been considered in the economic and legal literature. The appropriate place in working out of this scientific research area belong to Bazylevych V., Dozortsev V., Sergeyev A., Svyatotsky O., Orlyuk O., Drobyazko V. and others. At the same time, the questions concerned research of different theoretical approaches to the analysis of structure of intellectual property relations, classification of objects and subjects of intellectual property, definition of a role of intellectual property in public reproduction, in our opinion, remain partly undiscovered.

The purpose of the article consists in research of structure of intellectual property relations, serious consideration of conceptual approaches to classification of objects and subjects of intellectual property relations, definition the role of intellectual property relations in modern economic system.

**Main body.** Intellectual property relations are form of economic relations of the property and consequently certain tendencies of their development will completely be coordinated with modern directions of transformation of property relations. Complication of intellectual property relations and division of intellectual property rights predetermines increase in quantity of intellectual property subjects and rise level of transaction costs in economy. Noted tendency has received an extended coverage in the new institutional theory. Division of intellectual property demands careful specification intellectual property relations and effective mechanism of their legal regulation.

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.

**The structure of intellectual property relations includes: types of intellectual property relations, subjects and objects of intellectual property relations.**

**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 usage 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 intel-

lectual activity results that directly and indirectly is not connected with its use.

It is necessary to notice that different kinds of intellectual property relations can integrate in different combinations in economic activities. Thus, **intellectual property relations, being a kind of economic relations of property, own both the general patrimonial traits, and 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;
- 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;
- Intellectual property objects thanks to the non-material nature can be easily duplicated and consequently demand special legal, technical and organizational protection.

Considered above feature of intellectual property relations transforms them 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) within the limits of a 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 tech-

nocrats, 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.

In the end of XIX c. intellectual activity has received considerable stimulus to development, and together with it has started to extend the nomenclature of intellectual property objects. From the beginning of origin of intellectual property right two groups of intellectual property objects were allocated: copyright objects and industrial property objects. In the Charter of Republic Venice accepted in 1474, possibility of the protection of moral and sole property rights of the author of such object of the industrial property as the invention, if it was original, new in territory of Republic Venice and had industrial suitability, has been fixed. The Charter about monopolies accepted in Britain cancelled all existing privileges and monopolies and thus left for the monarch the right to give privileges only to authors of new inventions in an industry within 14 years. Thus the author could deprive of privileges if he unreasonably rise prices for its product. According to norms of patent law accepted in 1791 in France by the board of the revolutionary government any opening or the new invention in any branch of industry is the property of its author therefore not to consider the industrial invention as the property of its creator is a restriction of human rights.

Accepted in 1709 in Britain the Charter of Queen Anna established exclusive property rights of authors of literary works on results of they creative activity. Noted property rights were protected within 14 years and this term could be prolonged by author for 14 years remained. The author could dispose freely of the right to copy the product or to transfer this right to the publisher. From here subsequently "the copyright" concept come into existence. In France two decrees in which "copyright" concept has been used for the first time have been accepted by the board of the revolutionary government: Decree about the performing right and execution drama and musical product in 1791 and Decree about the property right of authors of literary works, composers and painters in 1793 which established protection of property copyrights during life of the author and 10 years after his death. Thus, in the end of XVIII c. terms "industrial property" and "copyright" were actively applied both in Europe, and in the USA.

In XX c. from copyright separate the related rights. For the first time at national level the related rights receive legislative regulation in the law on the copyright of Austria 1936 In 1941 in the copyright law of Italy for the first time the term "related" right is applied, and in 1961 the International convention on protection of the rights of executors, manufacturers of soundtracks and the on-air broadcasting organisations is accepted. At the end of XIX c. – at the beginning of XX c. individualization tools become object of legal regulation. The first law concerning protection of the trademark is accepted in France in 1857, in Italy – in 1868, in the USA – in 1881, in Germany – in 1894, in Britain – in 1883 In 1919 in France first in the history special law in sphere of geographical Indications regulation is accepted. Besides, in second half of XX c. untraditional results of intellectual activity become object of legal regulation: trade secret, know-how, scientific discovery, results of selection activity, configuration of integrated microcircuits, rational proposals. Thus, next to copyright and the industrial prop-

erty objects the new groups of an individualization tools and untraditional objects of intellectual property are arise.

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: 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 norms of TRIPS IPO include: copyright and related rights, trade marks, geographical indications, industrial designs, patents, configurations of integrated microcircuits, protection of trade secret, control over practice of anticompetitive actions in contractual licences.

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 [6].

In our opinion, all approaches to classification of IPO should be divided conditionally on two groups: 1. Classification of IPO depending on its characteristics which is based on the analysis of their most essential features, specificity of their protection, features of realisation of property and non-property rights; 2. Classification of IPO depending on various minor criterions which do not reveal nature and character of IPO but at the same time allow to divide them into groups according to concrete tasks of research.

**Let's consider approaches which belong to the second group.** Depending on sphere of intellectual activity which has caused creation of IPO and their functional appointment, they can be divided on: results of technical, art, scientific activity, individualization tools.

Depending on necessity of registration for acquire of intellectual property rights it is possible to divide IPO on: objects, for which not provided registration possibility; objects for which registration has facultative character; objects for which registration carries a obligatory character. Depending on degree of legal security IPO can be divided on protected and unprotected.

Depending on use in economic overturn it is necessary to define productive or active IPO which are commercialised and bring income, and also unproductive or passive IPO which for these or those reasons are not commercialised and do not bring income.

Also among intellectual property objects we can sign out: absolute welfares which directly satisfy consumer or industrial needs and bring in direct income of commercialisation; relative welfares which indirectly satisfy consumer or industrial needs and bring in indirect income of commercialisation (for example individualization tools).

In addition IPO could be classified on formalized which it is possible to use right after their creations (objects of copyright and relative rights); non-formalized which at first need to be embodied in the certain objective form and only then to use (objects of the industrial property). Depending on quantity of authors IPO can be classified on: individual and created in the co-authorship. Depending on the objective of creation IPO can be classified on: objects created under own initiative, official objects, objects created to order. Depending on the owner of intellectual property rights

IPO can be divided on: individual, collective, state objects. Depending on possibility to allow using IPO it is possible to divide them on alienated and inalienable objects (geographical indications, commercial names).

Depending on sources of receipt IPO can be classified on: developed, inherited, received in qualities of a assessed contribution in authorised capital, received in time use on a paid basis. Also depending on degree of novelty IPO is possible to classify on: new, original, indirect. Depending on term of protection of intellectual property rights IPO is possible to classify on: IPO with the limited term of protection of property rights, IPO with unlimited term of protection of property rights. Depending on degree of liquidity IPO can be divided on: high liquidity objects, liquid, low liquidity objects. Depending on term of profitable use IPO is possible to divide on: current (short-term), intermediate term, long-term.

**Concerning approaches which belong to the first group, opinions of scientists disperse.** Kraynev P. subdivides objects of intellectual property on: objects of industrial property, objects of copyright and relative rights, trade secrets, protection against an unfair competition [3, p.25]. Sergeev A. single out copyright objects, objects of patent right, other objects of intellectual property [5, p.20]. Bazylevych V. among objects of intellectual property single out: objects of copyright and relative rights, objects of industrial property, individualization tools of participants of a civil overturn of the goods and services [1, p.131]. Kiselyova J. divides IPO on: objects of industrial property (including individualization tools), objects of copyright, objects of relative rights [2, p.26].

In our opinion, the most lawful is division IPO 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** 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** 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** in direct understanding do not belong to results of intellectual activity as their value is defined not by a creative payment, 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 configu-

ration 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 appropriation of intellectual activity results. Active development of intellectual property relations pre-determines 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 appropriation 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 who provided with intellectual property rights as a result of inheritance or contract execution; 4. Subjects who represent interests of subjects of the two first groups, carrying out mediatorial functions or acting in a role of authorised representatives; 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 is based on norms of Ukrainian legislation. At the same time, in our opinion, the given approach narrows a circle of participants of intellectual property relations and does not consider subjects who carry out regulating and mediatorial 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 as their value is defined not by

a creative contribution, art or technological level, but depend from business reputation of the enterprise.

Near to the approaches 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** who take direct part 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** who directly take part 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 actives, and then invest them in the financial tools emitted 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 faster transformation of an intellectual product in a stream of incomes of economic activities.

According to article 421 of Civil Code of Ukraine to intellectual property subjects refer creator (creators) of intellectual property object and other persons to whom belong personal non-property and (or) intellectual property rights. According to article 423 personal non-property rights are: right to identification of person who create intellectual property object as a creator; right to interfere with any encroachment on the intellectual property right, capable to harm honour or reputation of the creator [6]. In the scientific literature in addition also consider the right to promulgation of intellectual property object, and also right to inviolability of intellectual property object. Personal non-property rights belong exclusively to the creator of intellectual property object, do not depend on intellectual property rights, are not limited in time and space and cannot be alienated, behind the exceptions established by the law.

**To intellectual property rights refer:** right of use of intellectual property object; exclusive right to allow use of intellectual property object; exclusive right to interfere with a misuse of intellectual property object, including to forbid such use. Intellectual property rights are limited in time and in certain cases – in space, can be alienated

according to the law can be used as assessed contribution to authorised capital.

The **creator of intellectual property object** is a physical person who has created it by his own intellectual activity. The citizen of Ukraine, citizen of other country or the person without citizenship irrespective of age and civil capacity can be the creator. Person can be recognised as the creator depending of his legal capacity. Thus ability to realise intellectual property rights depends on degree of legal capacity of the creator. The person who realises value of the actions has civil capacity and can supervise over them. Civil capacity is ability of the person to get civil rights and independently to carry out them, and also ability to create civil duties, independently to carry out and bear them responsibility for their default.

The physical person who has not reached 14 years, owns partial legal capacity. It has the right to make independently small household legal transactions (which satisfy household requirements of the person, answer its physical and social development, and also concern a subject which has low cost); to carry out the personal non-property rights to intellectual activity results. Persons at the age from 14 till 18 years own incomplete legal capacity. They are clothed with the right to make small household legal transactions, independently to dispose of the earnings, independently to carry out the right to intellectual activity results, to be the participant of legal bodies. Other legal transactions can be made by persons with incomplete legal capacity only under the consent of parents or trustee.

The physical person who has reached 18 years has full civil capacity. In case of registration of marriage of the person which has not reached 18 years, it gets full civil capacity from the moment of marriage registration. Besides, full civil capacity can be given the person who has reached 16 years and works under the labour contract, or the minor person which is written down by mother or the father of the child. Thus, granting of full civil capacity is carried out under the decision of body of guardianship and care under the statement of the person behind the written approval of parents or the trustee.

The court can limit civil capacity of the person if she suffers on mental frustration which essentially influences its ability to realise value of the actions or to supervise over them; if she abuses spirits, narcotics, gambblings and that puts itself in difficult financial position. Over the person with the limited capacity the care is established. Noted person retain the right independently to make small household legal transactions and to carry out the personal non-property rights to intellectual activity results. Other legal transactions can be made only at the consent of the trustee. Over the incapacitated person guardianship also is established. Thus the person has no right to make any legal transactions. It is necessary to note, that even incapacitated persons, store the right to carry out the personal non-property rights to results of intellectual activity.

Creator is the primary subject of intellectual property relations concerning copyright and industrial property. Creator is the physical person which personally carries out the non-property rights, and also realises property rights direct or indirect through the trustee or parents. At the same time, both physical and legal bodies can be the primary subjects of intellectual property relations concerning individualization tools and related rights.

The especial subject of intellectual property in case of official products is the employer. According to article 429 of Civil Code of Ukraine personal non-property rights on the object created in connection with execution of the labour contract, belong to the worker who has created this object [6]. Property rights on noted object belong in common to the worker and the employer if another is not established by the contract. Thus, a primary subject of intellectual property concerning official product is both the physical person and the legal body (employer). According to article 430 identical dis-

tribution of the rights between parties to relations of intellectual property is carried out in the case of objects created to order. Thus, to primary subjects of intellectual property on object created to order refer physical person (executor), and legal or the physical body (customer).

In case of the co-authorship in structure of primary subjects of intellectual property relations single out physical persons whose joint intellectual activity have created corresponding object of the property. Thus, the right to the product created in the co-authorship, belong to co-authors jointly irrespective of, represents product one indissoluble whole or consists of parts, each of which can have independent value (a product part has independent value if can be used irrespective of other parts of product). Relations between co-authors can be defined by the contract, otherwise the right to product should be carried out by co-authors in common.

It is necessary to notice that according to the domestic legislation, the subject of intellectual property there can be a state on the basis of inheritance, and also on the basis of talent or transfers of the rights by the primary subject of intellectual property to the state. Further we carefully will analyse subject structure of intellectual property relations concerning different intellectual activity results.

According to the Law of Ukraine "About copyright and relative rights" the **primary subject of the copyright** is the author of work – the physical person who has created the work by own creative activity [8]. In the absence of proofs of the contrary the author of work considers the physical person noted in the usual way as the author on the original or a copy of work. Thus, the copyright arises from the moment of creation of work, and any registration or execution of other formalities is not required for copyright realisation. In the case of combined and derivative works to primary intellectual property subjects refer editors, translators, authors of adaptation and summaries. The copyright to the combined work belong to the editor or compiler of the work. The compiler uses the copyright under condition of observance of the rights of authors of each work included in combined work. The copyright to the translation, adaptation, arrangement or other processing of works belong to the author of derivative product. Thus, the author of derivative product uses the copyright under condition of observance of the rights of the author of processed work.

According to article 37 of the Law of Ukraine "About copyright and relative rights" primary **subjects of the related rights** are the performer, manufacturer of a soundtrack, manufacturer of videogram, broadcasting organisation [8]. The related right arise from the fact of performance of works, manufacture of a soundtrack, videogram, promulgations of broadcast. Origination and realisation of the related rights does not demand registration or execution of other formalities. In the absence of proofs of the contrary as the owner of the related rights are considered the person which name is noted on a soundtrack, videogram and their copies. Thus, the manufacturer of a soundtrack and videogram can be both physical and legal bodies. Only the legal body who has the licence for broadcasting can be the manufacturer of broadcast and owner of respective related rights.

According to article 463 of Civil Code of Ukraine a **primary subject of intellectual property on the invention, utility models and the industrial design** is the inventor or the author of the industrial design, physical persons, which intellectual activity creates corresponding object of the industrial property [6]. Property rights on the invention, utility model or industrial design arise from the date following date of their registration. The certificate of the registration is the patent, and the ambit of right protection is defined by the invention formula or set of essential features of the industrial design. It is necessary to notice that the basic condition of registration of the industrial property rights is their conformity

to conditions of patentability. For example, patentability of invention defined by its novelty, inventive level and industrial suitability. Also, it is necessary to consider that the patent at will of the author can be given out to the person (legal or physical) for which benefit author concedes sole rights.

**Primary subject of intellectual property on configuration of integrated microcircuits** is the author, physical person which intellectual activity creates corresponding object. Intellectual property rights on configuration of an integrated microcircuit arise from the date following date of their registration. The confirmation of the registration is the certificate, and the ambit of right protection is defined by configuration image on the material carrier. A condition of registration of configuration of an integrated microcircuit is its originality.

According to article 493 of the Civil Code of Ukraine **primary subjects of intellectual property on a trade mark** can be both physical, and legal bodies. Intellectual property rights on a trade mark arise from the date following date of their registration. The ambit of right protection is defined by the image of a trade mark resulted in the certificate and the inventory concerning which it used. It is important to consider that well-known trade mark does not demand registration. The right protection is given to trade marks which do not contradict a public order, humanity and morals principles, and also have distinctiveness power.

According to article 159 of the Commercial Code of Ukraine **primary subjects of intellectual property on the commercial name** are physical and legal bodies which perform enterprise activity [7]. Intellectual property rights on commercial name arise from the moment of its first use and are protected without registration or execution of any formalities, even if commercial name is part of a trade mark. The legal protection is given to commercial names which have distinctiveness power and do not mislead consumers. The rights to the commercial name can be alienated only together with complete assets of the subject.

According to article 9 of the Law of Ukraine "About protection of the geographical indications" **primary subjects of intellectual property on geographical indications** are physical and legal bodies which perform enterprise activity which conform to following conditions: produce goods in declared geographical place; the special features of products, certain qualities, reputation or any other characteristics are connected with this geographical place [9]. Property rights on simple geographical indications arise from the moment of its use, and property rights on the qualified geographical indications arise from the date following date of its registration. The legal protection is given to the qualified geographical indications, which have distinctiveness power; do not mislead consumers; do not contradict a public order, humanity and morals principles; is the name of a geographical place from which the goods coming from; are used as the name of the goods or a name component. Thus, in a geographical place there should be special conditions which give to the goods certain special qualities, and the goods or its basic component should be made in a corresponding geographical place. The ambit of right protection is defined by characteristics of the goods and limits of a geographical place noted in the certificate of registration. The rights to geographical indications can be alienated only together with complete assets of the subject.

The important place among results of intellectual activity is kept by untraditional objects of intellectual property. A **primary subject of intellectual property on scientific discovery** is its author, the physical person who has established unknown earlier, but objectively existing laws, properties or phenomena of the material world. The law protects only non-property rights of the author of scientific discovery. The right to scientific discovery can be confirmed with diploma, arises from the moment of reali-

sation of discovery and does not demand execution of any formalities. According to article 483 of the Civil Code of Ukraine **primary subjects of intellectual property on efficiency proposal** is author (physical person) and the legal body to whom this proposal is submitted. The ambit of right protection of efficiency proposal is defined by its description and drawings if they are submitted. Unfortunately, the domestic legislation properly does not regulate a question of the moment of occurrence of intellectual property right on the efficiency proposal.

**To primary subjects of intellectual property on grades of plants and breed of animals** refer authors (physical persons) who have created corresponding object with their intellectual activity. Intellectual property rights on grades of plants or breed of animals confirmed with patent and arise from the date following date of their registration. It is necessary to notice that the right to distribution of a grade of plants or breed of animals should be in addition testified the state registration. Patentability of grades of plants or breeds of animals defined by their novelty and firmness (for breeds of animals – cleanliness). **Primary subject of intellectual property on a trade secret** is physical or the legal body which perform enterprise activity and which has defined it confidential and commercial valuable information as a trade secret and has carried out actions concerning maintenance of its privacy [1, p.178]. Property rights on a trade secret arise from the moment of definition of the information as confidential and commercially valuable and do not demand registration or executing of any formalities.

**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.

Over a period of genesis and evolution intellectual property relations lawyers-practice and scientists used different criteria of classification of intellectual property objects. Two groups of approaches to classification of intellectual property objects have been considered: depending on character of intellectual property objects and depending on set of minor features. Besides, necessity of defining of incorporeal objects of intellectual property which cannot be labelled as objects of copyright, industrial property or branding tools, and at the same time own a number of the general patrimonial features has been proved.

Ukrainian legislation thoroughly regulates subject structure of intellectual property relations. Norms of Ukrainian

intellectual property right define sole non-property and property rights of parties to intellectual property relations. In 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. 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. As a result of the carried out research we had been offered two new approaches to classification of party's to intellectual property relations depending on their role in relations of intellectual property and their economic functions are offered, which allow to embrace as much as possible all participants of intellectual property relations, consider their role in the process of commercialisation, and draw attention to subjects which carry out regulating and mediatorial functions on the intellectual property market.

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 to objective necessity of the further development of theoretical and methodological basis of research of nature and structure of intellectual property. It is necessary to analyze approaches to structurization of intellectual capital, methods of intellectual property objects valuation, and activity of intermediaries in the intellectual property market. Thus, necessity of carrying out of the further researches for the given direction does not raise the doubts.

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### СУТНІСТЬ ВІДНОСИН ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ ТА ЇХ РОЛЬ У СУСПІЛЬНОМУ ВІДТВОРЕННІ

*Стаття присвячена теоретичному аналізу сутності та структури відносин інтелектуальної власності. Досліджено види відносин інтелектуальної власності та їх роль у суспільному відтворенні. Розглянуто переваги та недоліки різних підходів до класифікації об'єктів інтелектуальної власності. Проаналізовано сутність та особливості інкорпоральних об'єктів інтелектуальної власності. Досліджено критерії класифікації суб'єктів відносин інтелектуальної власності.*

*Ключові слова: відносини інтелектуальної власності, класифікація, об'єкти та суб'єкти інтелектуальної власності, авторське право, промислова власність.*

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### СУЩНОСТЬ ОТНОШЕНИЙ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ И ИХ РОЛЬ В ОБЩЕСТВЕННОМ ВОСПРОИЗВОДСТВЕ

*Статья посвящена теоретическому анализу сущности и структуры отношений интеллектуальной собственности. Исследованы виды отношений интеллектуальной собственности и их роль в общественном воспроизводстве. Рассмотрены преимущества и недостатки разных подходов к классификации объектов интеллектуальной собственности. Проанализирована сущность и особенности инкорпоральных объектов интеллектуальной собственности. Исследованы критерии классификации субъектов отношений интеллектуальной собственности.*

*Ключевые слова: отношения интеллектуальной собственности, классификация, объекты и субъекты интеллектуальной собственности, авторское право, промышленная собственность.*