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COMMERCIALIZATION OF INTELLECTUAL PROPERTY RIGHTS AS FOUNDATION FOR INNOVATION

Introduction. *Innovations are considered impossible without intellectual, creative work of authors. Inventors and others are involved into this process. Ukraine has approved striving to become technologically developed and competitive member of international relationships in the view of information era.*

Problem Statement. *Most of patents issued in Ukraine do not provide profitability for patented technical solutions. Thus, effective commercialization of intellectual property rights is crucial on the way to the developed innovative economics of Ukraine. Commercialization of intellectual property rights is considered as the foundation for innovation process.*

Purpose. *The purpose is to disclose the concept of commercialization of intellectual property rights.*

Materials and Methods. *The concept and elements of intellectual property commercialization have been analyzed.*

Results. *The commercialization of intellectual property rights is characterized by graduality, which is reflected in stages which are realized one after another.*

Conclusions. *The following stages (elements) of commercialization of intellectual property have been identified: identification of the object of intellectual property and obtaining a security document, unless otherwise provided by law; marketing (product identification, market analysis, sales channels, pricing, audit), which includes, in addition to the above promotion of the product / service using the object of intellectual property; valuation of intellectual property (cost method, market (comparative), income methods of valuation); intellectual property rights insurance; search for users and conclusion of agreements with them on exploitation of intellectual property rights. The research has focused on some types of agreements connected directly or indirectly with intellectual property: license, license agreement, assignment agreement, franchise agreement, non-disclosure (confidentiality) agreement, and collaboration agreement.*

Keywords: commercialization of intellectual property rights, innovations.

Promotion of innovations is vital for economic and social development of every democratic society. Ukraine has approved striving to become technologically developed and competitive member of international relationships in the view of information era. As the global demand for research and development and IT specialists increase, more and more leading international companies, including the best amongst them (e.g. *Samsung*), cooperate with Ukrainian scientists on various research projects, as well as investing in Ukrainian startups. Recently research report *Ukraine in the Global. Innovation Dimension Report. 2007—2017* was conducted by several IT companies on innovative activity of Ukrainians all over the world. Report provides information on patents issued all over the world to Ukrainian inventors [1]. According to this report Ukraine has a high number of patents and utility models registered during the 2007—2017 period than

Poland. At the same time issued patents do not provide profitability for patented technical solutions. Thus, effective commercialization of intellectual property rights is crucial on the way to the developed innovative economics of Ukraine. Scientific analyze of intellectual property commercialization is due to the fact of relevance of the issues mentioned above. Particular aspects of commercialization of intellectual property were emphasized by such Ukrainian and foreign scholars: I. Dakhno, V. Kuntsevych, I. Koval, O. Oryluk, O. Pidoprigora, O. Svyatotsky, I. Korostoshova, V. Bazilevich, V. Zharov, Yu. Kuznetsov, M. Paladii, V. Potekhina, A. Pidoprigora, and P. Tsybulov.

Innovations and objects of intellectual property are the economic drivers of the modern world economy. These sectors are powerful engines for economic and prosperity growth not in particular country but worldwide. Today, we live and interact in a global economy, built on information technology and aims to generate profit from the results of intellectual activity as intangible benefit. The role of intellectual property in recent decades has changed, due to the concentration of economic interest in the new knowledge embodied in specific technical solutions and their legal protection. Mark Getty, the owner of Getty Images, once noted that "intellectual property is the oil of 21 century" Technology transfer in the process of innovation and economic growth has become more central since the emergence of the so-called knowledge-based economies. Moreover, the transformation of patented knowledge and innovation into commercial value depends primarily on strong intellectual property rights and efficient transfer and acquisition. According to the International Monetary Fund, by 2016, the amount of fees paid for the use of intellectual property worldwide amounted to USD 372,006 billion as compared with the same indicator in 1960 — USD 6,599,997 million [2]. In our view innovation should be considered as multidimensional concept. Successful innovation can be on multiple dimensions, not merely on a product or service basis. This system includes intellectual property, network, customer experience, commercialization. Intellectual property becomes an integral part of economic processes for profit only if it is commercialized, that is a set of certain measures of an economic and legal nature.

Realization of an innovative model of Ukraine's development is impossible without the creation of a modern system of normative regulation of relations in the field of the results of intellectual activity, which would provide reliable protection of the rights of authors, performers, inventors and guaranteed prevention from possible infringements. Effective commercialization of intellectual property is aimed not only at creating an innovative product, but also the registration of rights by obtaining a security document.

It is not a secret that under current conditions in Ukraine it is much easier to obtain a patent for a utility model issued on the basis of the results of a formal examination to an invention, the procedure for the patenting of which involves verification in the course of the qualification examination of the declared result for compliance with the conditions of patentability. At the same time, in other countries patents do not generally issued for utility models as such as they do not guarantee the "patent purity" of an innovative solution. So, in the US [4] and UK [5] legislation, the utility models are not protected. In the European Union (Hungary, Germany, Spain), patents for utility models are issued, however, the condition of their patentability of utility models is to test the requirements of relative novelty. According to the legislation of Ukraine, the requirement of patentability for inventions and utility models is the presence of world-wide novelty, however, when granting patents for an invention, such condition is verified, and in the case of the patenting of utility models, this test is not carried out.

In Ukraine, the overwhelming majority of domestic patents obtained under the national procedure are patents for utility models, that is, documents issued without verification of the patentability of the declared technical decisions as was mentioned above. Thus, according to the consoli-

dated annual report in 2016 there are 2422 applications for a patent for an invention were filed under the national procedure and 1673 according to an international procedure [6]; 2813 patents were issued (1277 in the name of national applicants and 1536 in the name of foreign applicants). 9557 applications were filed for the patent for the utility model, of which 9467 from national applicants and 84 from foreign applicants, including only 6 applications under the PCT procedure; 9044 patents were issued (8931 in the name of the national applicants and 133 in the name of the foreign applicants).

In the 1st quarter of 2018, 995 applications were filed for patent applications (577 of them by national procedure and 418 by international procedures), and 706 patents for the invention were issued. 2408 applications were filed for the utility model, of which 2375 were national applicants and 29 were foreign; 2249 patents for utility models were received.

The given statistics results in the following: 1) the overwhelming majority of the submitted applications to the domestic patent office by the national applicants are applications for a utility model; 2) foreign applicants apply for a patent for the invention in Ukraine and operate, generally, on the basis of an international procedure in accordance with the Patent Cooperation Treaty; 3) the number of patents issued for inventions, in general, is the same for domestic and foreign applicants (1.2—1.5 thousand, respectively); 4) almost all issued patents for the utility model (about 9 thousand) belong to domestic applicants; 5) the ratio of issued in Ukraine patents for inventions and patents for utility models in the name of domestic inventors is 1/6, while this indicator is on the behalf of foreign applicants is a ratio of 11/1 [7].

Thus, the purpose of patenting by domestic applicants is usually not to obtain a qualitative security document (patent for an invention) that can be effectively monetized, and the rapid obtaining of a patent for a utility model without verification of the conditions of patentability of the claimed technical solution. Therefore, the quality of such patents may be rather low, and their commercialization is also much more complicated. At the same time, foreign applicants protect in Ukraine their technical solutions in the form of inventions, which increases the level of their subsequent successful commercial use.

This situation has led to the spread of cases of "patent trolling" in domestic practice, that is, the obtaining of security documents for simple technical solutions with the aim of creating obstacles or getting remuneration from business entities, which use them for a long time in their business activities. The length of the trial of cases on the invalidation of security documents on intellectual property objects, the cost of the process, the need for judicial review, the possibility of appeal and cassation appeal of the court decision and other factors, of course, do not contribute to the proper protection of the rights of subjects from abuse in the field intellectual property rights. The length of the litigation of cases on the invalidation of security documents on intellectual property, the cost of the process, the need for expertise, the possibility of appeal and cassation appeal of the court decision and other factors, of course, do not contribute to the proper protection of the rights from abuse in the field intellectual property rights.

In these circumstances, we emphasize that the legislative system of intellectual property protection should include a set of measures to combat the abuse of patent rights. These include, in particular, the introduction of an administrative procedure for the invalidation of patents issued by the appellate body of the patent office; consolidation, along with the formal procedure, procedures for checking declared as utility models of technical solutions for local novelty; establishing liability for subjects who abuse the rights of intellectual property, etc.

Inventors in choosing the forms of legal protection of the created technical solution as an invention or as a utility model should also take into account the prospects of commercialization of their innovative product, the possibility of its re-

alization by potential investors, the interest of consumers in the use of objects of innovation, the effectiveness of intellectual property rights protection on creative results.

In legal science, the commercialization of rights to the results of intellectual activity is seen as the main element of the innovation economy and the complex phenomenon, the socio-economic premise of which is the perception of these rights as a good, the need of others in which allows the right holder to receive income as a result of their introduction into turnover [3, p. 591].

I. Koval considers the commercialization of intellectual property rights as a combination of legal, financial, economic, technical, organizational, managerial nature related to the organization of activities in the area of the use of intellectual property objects and the transfer of rights for these objects in order to profit [8, p. 22] .

World Intellectual Property Organization gives a definition of commercialization of IP as a continuum of activities and actions that provide for the protection, management, evaluation, development and value-creation of ideas, inventions, and innovations to reduce them to practice through prototypes and implemented processes leading to the development of products and services by entrepreneurs, startups, existing companies as well as governments resulting in economic, cultural and societal benefits [9, p. 121].

In our opinion, commercialization on the results of intellectual activity should be considered as a general-social (systematic) phenomenon.

As a systemic phenomenon, the commercialization of rights to the results of intellectual activity is a complex of social relations (economic, legal, etc.) that ensure the perception of these rights as a commodity, the need in which other persons enable the right holder to profit from the introduction of these rights into turnover [10, p. 39].

The mechanism of commercialization of intellectual property includes separate elements, such as the identification of a specific object of commercialization, the search for effective personnel, the formation of a system of legal protection of intellectual property rights, the construction of a system of marketing and sale of goods and / or services, etc.

The defining element of commercialization of intellectual property is the object of such commercialization of rights to the results of intellectual activity.

The object of intellectual property commercialization is the exclusive proprietary intellectual property rights of an intellectual property object (for example, the right to use a trademark) within the time limit, on the territory and in the areas specified by law and / or a security document issued by an authorized public authority.

In this regard, in the legal literature there is an approach that the object of commercialization, that is, the product, can not be the results themselves, although it is in their use and there is a need for the manufacturer. The results of intellectual activity are essentiall information the access to which in most cases is opened, and everyone has the opportunity to own it. Economic rights may be the subject of contracts, including payments, which constitute the legal basis for the commercialization of these rights and the use of the results of intellectual activity in the innovation process. Therefore, Art. 427 of the Civil Code of Ukraine provides for a general rule that economic rights to intellectual property may be transferred to another person, including by treaties.

According to the method of ensuring legal protection, objects of commercialization can be divided into the following types: economic (property) rights to objects of copyright and related rights, economic rights to objects of industrial property rights, economic rights to the means of individualization of participants in civilian turnover. Considering that most innovations consist of technical solutions and means of individualization, copyright or related rights won't be examined in details in this article.

The commercialization of intellectual property rights is characterized by graduality, which is reflected in stages that are realized one after another. The Order of the State Committee of Uk-

raine on Science, Innovation and Informatization of 18.09.2010 No. 18 "On Approval of Methodological Recommendations" provides for the following mechanism for the commercialization of scientific developments: technological audit, marketing research, economic audit, obtaining security documents, promotion, conclusion of a contract. We consider this approach to be reasonable in its content, although incomplete. In addition, when commercializing objects of property copyright and related rights and means of individualization of participants in civilian turnover, the composition of this approach should be applied taking into account the differences of each of the objects of commercialization.

Taking into account international approaches, domestic practice, it is expedient to allocate the following stages of commercialization of intellectual property rights:

1) identification of the object of intellectual property and obtaining a security document, unless otherwise provided by law (for example for copyright);

2) marketing (product identification, market analysis, sales channels, pricing, audit), which includes, in addition to the above promotion of the product / services using the object of intellectual property;

3) valuation of the of intellectual property (in terms of cost, market comparative, profit-based valuation methods);

4) economic rights protection of intellectual property;

5) search for users and enter into agreements with them on disposing of intellectual property rights.

1. Commercialization of intellectual property consists of different elements. The first element is identification of intellectual property rights and subsequent obtaining legal protection. Protection is often linked to state registration concerning most of intellectual property rights: invention, utility model, trade mark, industrial design, trademarks. As to copyright in innovation process, software is often can be found as common object of commercialization, which is not subjected to compulsory registration under general rule set in Berne Convention. As mentioned above we will consider protection of technical solutions (patents) and means of individualizations. In the European Union one obtains the security document for technical solution who has filed the application first to the Intellectual property office. In comparison with the approach embraced by the Unites States of America system — one gets the legal protection who has primarily invented technical solution. Under Ukrainian law protection of exclusive economic rights in invention, utility model, trade mark or industrial design is granted after the state registration finalized by issuing the certificate or patent. In this regard such patents or certificates named "security documents" as state ensures the holder that his rights are protected under the law. Copyright protection does not depend on registration or any other formalities due to Berne Convention provisions.

Choosing certain regime of legal protection for intellectual solution legislation provisions and requirements on legal protection should be considered. Exclusive economic rights vest in rights in invention, utility model, trade mark or industrial design only after state registration preceded by procedure of testing. For invention test conducted by experts to determine whether technical solution falls into the scope of patent protection: novelty, inventive step and capacity of industrial application (usefulness). If these three requirements are met, then invention can be offered a legal protection under patent. In order to get a patent protection of invention inventor should disclose the technical solution, thus sometimes regime of trade secret protection is more appropriate. Trade secret can protect any information, including, technical solutions, used by enterprises in their commercial activity. Trade secret does not imply registration or any other formalities linked to disclosure of such information as the main feature is secrecy. Copyright protection is the least favorable regime of protection

for technical solutions as protects the form of expression but not idea and scope. The exclusion could be made for computer programs and data bases while they frequently are a part of innovative projects. Still, in these cases copyright protection does not fall out of the "idea/expression" rule.

2. Marketing of the intellectual property is conducted in order to study its market potential. Marketing research should be carried out in the following areas:

- identification of potential markets and their capacity, characteristics of market participants, their market sphere;
- the degree of monopolization of the market is determined;
- analysis of the state regulation of the market areas related to the use of the object of commercialization of intellectual property;
- dynamics of potential markets is determined;
- the level of profitability of potential markets is determined;
- information about competitors is provided.

One of means for effective marketing of intellectual property rights by small and medium enterprises (SME) or startups is scientific park. Scientific parks founded by academic and education organizations play essential role in promotion of innovation and economic growth. Currently 24 scientific parks registered in Ukraine. Main aim of scientific park is conduction scientific projects involving innovations and new technologies. SME can file their propositions on projects to special competition administered by scientific park. By the end of competition, agreement is concluded between scientific park and SME for further project implementation. Support of project realization can be provided under investment of scientific park itself, state authorities or other commercial enterprises under contractual basis. Activity of Scientific parks in Ukraine is regulated by special legislation — Laws of Ukraine "On Scientific Parks" and "On Innovative Activity".

3. Economic rights in intellectual property owned by a legal entity considered as an intangible asset for which commercialization is expected to be profitable. Profitability of the enterprise is due to the combination of fixed assets, working capital and intangible assets. However, without proper valuation of intangible assets, effective commercialization is not possible. The valuation of an intellectual property object from an economic point of view is the definition of the potential economic benefit of a particular intellectual property asset. The value of intellectual property property is directly related to the ability to exclude a potential competitor from a particular market segment, since legal protection gives the exclusive right to use, prevent abuse and grant permissions for use by third parties.There are three well-known valuation methods of intellectual property assets*: cost method, market (comparative) method and income method*. These methods used in valuation of IP assets in European Union and in Ukraine [11, p. 98; 12; 13].

Cost method is based on the assumption that the value of the intellectual property asset is equal to the investment put into it, as well as bringing it into working condition. Such method aims to determine the value of IP asset at a certain point of time by consolidating the direct expenses (costs) and potential costs in its development and including the obsolescence of an IP asset. Prof. A. Damodaran states, that obsolescence of an IP asset generally understood through physical deterioration, functional, technological and economic obsolescence. However, physical deterioration is not applicable to intellectual property assets as they are intangible. But functional, technological and economic obsolescence have an affect on intellectual property asset, so should be considered. Functional obsolescence of intellectual property method linked to incur of operational costs excess. Technological obsolescence occurs when technological progress in certain sphere develops quicker then financial benefit of intellectual property. For example, next generation of inventions protected by patent makes intellectual property asset not relevant for current market. Economic obsolescence occurs when it is

not possible to return reasonable investment even by the best forms of intellectual property asset use [14].

Market (comparative) method is based on assumption of comparing identical (if possible) intellectual property assets exchange on the same market at the same period of time. Such method involves information from different data bases on prices, exchange of identical intellectual property assets, terms on transfer of rights (license agreements, cross-license agreements), territory, nature of intellectual property asset, industry etc. Mentioned above factors are vital for accurate valuation based on market method. Such method is simple as it based on usage of information and helps define inputs for the income method (further analyzed in this article). Although, market method resembles the mood of market at particular point of time based on information from open sources not including "hidden" factors.

Income method based on expected economic income generated by intellectual property asset. This method is considered to be the most commonly used and accurate. There are four parameters which must be quantified to use the income method: (i) the amount of net income the asset is expected to generate; (ii) the time period over which the income is expected to be received; (iii) the present value discount rate for future income (a risk free rate of return plus an inflation adjustment); and (iv) the risk of realizing the future income (a risk premium adjustment) [15, p. 7].

4. Nowadays company manages its intellectual property under specific policy or management system which help increase income flow. However intellectual property owner can face risks concerning exploitation of intellectual property rights. In recent years intellectual property insurance has developed aiming to minimize such risks. We consider intellectual property insurance as an essential element of IP commercialization especially for small and medium enterprises (SME).

Insuring intellectual property risks linked to registering, developing, exploiting, and protection of intellectual property rights as a strategic instrument of business development. Due to limited volume of this article will narrow analyze and consider only insurance of economic intellectual property rights owner granted under the patents, avoiding copyright and trade secrets. Definition of IP insurance sometimes brought through the meaning of financial instrument as considered in *Viability of Patent Insurance in Spain* by Elena Pérez Carrillo and Frank Cuypers: "patent insurance is a financial instrument that offers a guarantee against a range of patent-related risks (depending on the coverage afforded by each policy) assessed as a mechanism for supporting research and protecting patented research results" [16, p. 16]. In our view intellectual property (patent) insurance provides compensation of damages for the patent owner once the insurance case occurs. Patent insurance cover diverse patent-related risks which form basis for classification of patent insurance. Depending on whether patent holder claims for insurance or potential user of such patent insurance could be classified into: patent enforcement litigation insurance and patent infringement liability insurance respectively. Patent enforcement litigation insurance can cover legal expenses for litigation and damages which should be paid to the holder of patent. Patent infringement liability can cover legal expenses for litigation but excludes damages and fines. Michael J. Meurer asserts that such insurance is not accepted in the market and assumes it can be "explained by greater uncertainty associated with patent litigation as compared to copyright and trade secret litigation" [17, p. 18]. In our view it could be also explained by high riskiness for insurer because estimated damages could result in low profit. Scholars classify patent insurance by insured risk cover into single risk policies and multiple risk policies:

Single risk policies are based on a clearly defined

- cover that does not require extensive exclusion provisions;
- multiple risk policies combine coverage of several risks, which increases the cost of the product and requires detailed exclusion clauses

so that courts will not interpret policies more broadly than intended by the insurer on underwriting [16, p. 17].

By insurance sector Elena Pérez Carrillo and Frank Cuypers classify:

- legal expenses (or legal protection) insurance is intended to counter certain perceived deficiencies (high cost, duration, complexity) in the mechanisms for settling IPR-related conflicts. For instance, where an IPR, e.g., a patent, is infringed by a third party, or where R&D activities unintentionally infringe (or are accused of infringing) third-party patents;
- indemnity insurance covers the insured against damage awards — even covering civil liability — arising from a range of claims relating to patent rights: losses sustained in the event a patent is cancelled, contractual liabilities vis-à-vis licensees, damage awards to third parties, and the like. As it currently exists in the marketplace, IPR and patent insurance only rarely covers any of these indemnities [16, p. 16].

Ukrainian insurers haven't accepted patent insurance yet, as well as insurance of other intellectual property rights although this market is broad and perspective considering Ukrainian IT industry development.

5. Legal forms of commercialization of intellectual property should be fulfilled in written agreements on the disposal (management) of intellectual property rights. Art. 1107 of the Civil Code of Ukraine defines the main types of contracts used in the commercialization of intellectual property:

- license (exclusive, individual, non-exclusive) (Article 1108 of the Civil Code of Ukraine);
- licensing agreement (Article 1109 of the Civil Code of Ukraine);
- agreement on the transfer of exclusive economic rights of intellectual property (assignment) (Article 1113 of the Civil Code of Ukraine);
- franchise contracts (Ukrainian legislation names "commercial concession" such type of contracts) (Article 1115-1129 of the Civil Code of Ukraine);
- contribution to the share capital of legal entity (Article 115 of the Civil Code of Ukraine, Article 13 of the Law of Ukraine "On Business Associations");
- other agreements on the management of intellectual property rights (in particular, the agreement on joint activities, Article 1130-1143 of the Civil Code of Ukraine).

The most widespread legal forms of commercialization of intellectual property in civil turnover in the field of intellectual property are the license, licensing agreement and the agreement on the transfer of exclusive intellectual property rights (assignment).

The holder of intellectual property rights may grant to others, by way of a licensing agreement, a right under his or her patent application(s) or patent(s) to use make and sell a protected product (invention). In economics terms, the developer of knowledge or technological innovation and owner of intellectual property rights avails it to an appropriate business partner for more efficient commercial exploitation.

The Civil Code of Ukraine defines a license as the written authority of a licensor, that grants the licensee the right to use an intellectual property right in a limited area. According to Art. 1109 of the Civil Code of Ukraine, under license agreement should be understood, when one party (licensor) grants the other party (licensee) permission to use the of intellectual property rights (license) on terms determined by mutually defined by parties agreement, taking into account the requirements of this Code and other law.

The difference between these legal forms is the will of parties: when transferring the right to use the intellectual property right by concluding a license agreement, the parties determine the terms of use by mutual agreement, and when issuing a license the licensee has no right to change the terms of use of intellectual property.

The following types of license fees for using an intellectual property can be classified:

- royalties (the licensee pays the licensor during the entire validity period of the license / licen-

se agreement periodical fixed sum or a percentage of the amount of profit or the amount of turnover from the output);

- lump (payment to the licensor of the amount specified in the contract before the beginning of the use of the intellectual property right / mass release of licensed products);
- combined (payment to the licensee of a fixed / lump sum payment with the subsequent payment of the estimated price of the license in the form of royalties).

Agreement on the transfer (assignment) of exclusive economic rights of intellectual property provides for the transfer of economic intellectual property rights which is irrevocable. Taking into consideration special features of intellectual property rights — copyright, trade mark, assignment may be carried out in respect of a part of rights. Thus, holder of intellectual property rights may keep other part of rights, for example, intellectual property rights in a trademark for one of the classes it was registered for. Intellectual property rights for patented invention shall be transferred only in whole but never partially. Partial assignment of intellectual property rights is also provided for copyright under Article 31 of Law of Ukraine on Copyright and related rights.

On the basis of an agreement on the transfer of intellectual property rights one acquires, not only the rights but obligations, such as the obligation to maintain the validity of the patent or certificate [18, p. 8].

Franchise business model based on franchise contract is known for long time since the Magnetic Telegraph Company used it in the late 80-ies of IXX century after Amos Kendall acquired intellectual property rights in patent for telegraph from well-known inventor Morse [19, p. 8]. Franchise agreement allows parties to agree to the terms regarding the use of intellectual property right, system, and expertise to be franchised. Franchise agreement sets the conditions of the use of the franchise system, including the term length, franchise fee and royalties, as well as a number of other aspects, like developmental assistance, methods, training, and marketing.

Agreements on the disposal of economic rights (transfer of rights, license etc.) of intellectual property are not subject to mandatory state registration or notarial certification, unless otherwise provided by the terms of the contract or by law, but written for of mentioned above agreements is mandatory.

Art. 1114 of the Civil Code of Ukraine provides that the fact of transferring exclusive proprietary rights of intellectual property which, in accordance with this Code or other law, is in force after their state registration shall be subject to state registration. Consequently, treaties on the transfer of exclusive proprietary rights of intellectual property to a useful model, invention, trademark, geographical indication, industrial design, plant variety, animal breed.

Since 2015 franchise agreemets are no longer subjected to state registration which previously created obstacles concerning practical possibility of signing such type of contracts.

Collaboration agreements outline the specific contributions of different parties who work toward a mutual goal (for example, where a research institute and a private company are working on a joint research and development project).

Confidentiality agreements (or non-disclosure agreements — NDA) are important part of contract system of commercialization as they facilitate transfer of confidential information in a protected manner so that the disclosing party's confidential information is secured from disclosure to third parties (for example where an inventor discloses invention to an investor). Frequently, confidentiality (or non-disclosure) clauses are set as a part of other agreements, for example, license or franchise.

Control over intellectual property assets as continuing activity comprises monitoring on compliance with terms of agreements concluded. Besides that, right holder may provide monitoring on respect for his intellectual property rights not transferred by other third parties as part of

their product e.g. inventions or design. Such control in this context may be conducted through monitoring terms set in respected agreements. For example, franchise contracts may contain term on periodical reporting and conducting annual audition.

CONCLUSIONS

In our opinion, commercialization of the results of intellectual activity should be considered as a general-social (systematic) phenomenon.

As a systemic phenomenon, the commercialization of intellectual property rights is a complex of social relations (economic, legal, etc.), which ensures the perception of these rights as a good, the need for which other persons enable the rightholder to profit from the introduction of these rights into turnover.

Commercialization of intellectual property rights is characterized by a gradual process, which is reflected in stages that are realized one after another.

The following stages of commercialization of intellectual property are identified: identification of the object of intellectual property and obtaining a security document, unless otherwise provided by law; marketing (product identification, market analysis, sales channels, pricing, audit), which includes, in addition to the above promotion (promotion) of the product / service using the object of intellectual property; estimation of the object of intellectual property (on expense, market comparative, income methods of evaluation); intellectual property rights insurance; search for users and concluding with them agreements on the management of intellectual property rights; identification of intellectual property object linked to legal protection, often through state registration. Choosing certain regime of legal protection for intellectual solution legislation provisions and requirements on legal protection should be considered. Exclusive economic rights vest in rights in invention, utility model, trade mark or industrial design only after state registration preceded by procedure of testing. As to copyright in innovation process, software is often can be found as common object of commercialization, which is not subjected to compulsory registration.

Marketing of the intellectual property is conducted in order to study its market potential. Marketing research should be carried out in the following areas: identification of potential markets and their capacity, characteristics of market participants, their market sphere; the degree of monopolization of the market is determined; an analysis of the state regulation of the market areas related to the use of the object of commercialization of intellectual property; dynamics of potential markets is determined; the level of profitability of potential markets is determined; Information about competitors is provided.

Valuation of intellectual property asset conducted through three well-known valuation methods of intellectual property assets: cost method, market (comparative) method and income method. These methods used in valuation of IP assets in European Union and in Ukraine.

Intellectual property owner can face risks concerning exploitation of intellectual property rights, therefore in recent years intellectual property insurance has developed aiming to minimize such risks. We consider intellectual property insurance as an essential element of IP commercialization especially for small and medium enterprises (SME).

For the purposes of this research we have focused on some types of agreements connected directly or indirectly with intellectual property: license, license agreement, assignment agreement, franchise agreement, non-disclosure agreement, collaboration agreement.

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КОМЕРЦІАЛІЗАЦІЯ ПРАВ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ ЯК ОСНОВА ІННОВАЦІЙ

Вступ. Інновації неможливі без інтелектуальної, творчої праці авторів, винахідників та інших суб'єктів інноваційного процесу. Україна прагне стати технологічно розвиненим і конкурентоспроможним учасником міжнародних відносин в умовах інформаційної ери.

Проблематика. Комерціалізація прав інтелектуальної власності розглядається як основа інноваційного процесу, якій притаманна поступовість. Більшість виданих в Україні патентів не забезпечують прибутковості охоронюваних

технічних рішень, тоді як ефективна комерціалізація прав інтелектуальної власності є важливою складовою розвитку інноваційної економіки України.

Мета. Розкрити поняття комерціалізації прав інтелектуальної власності.

Матеріали й методи. Методи аналізу понять та складових комерціалізації інтелектуальної власності.

Результати. Доведено, що комерціалізація прав на результати інтелектуальної діяльності як системне явище являє собою комплекс суспільних відносин (економічних, юридичних тощо), які забезпечують сприйняття цих прав як товару, оскільки потреба в ньому інших осіб дає можливість правоволодільцю отримувати прибуток завдяки введенню цих прав в оборот. Комерціалізація прав інтелектуальної власності характеризується поступовістю, що відображається в етапах, реалізація яких відбувається почергово.

Висновки. Виокремлено такі етапи комерціалізації інтелектуальної власності: ідентифікація об'єкту інтелектуальної власності і отримання охоронного документа; маркетинг (ідентифікація товару, аналіз ринку, канали збуту, ціноутворення, аудит), який включає, крім зазначеного вище, просування (рекламування) товару/послуги із використанням об'єкту інтелектуальної власності; оцінка об'єкту інтелектуальної власності (за витратним, ринковим (порівняльним), дохідним методами оцінки); страхування майнових прав інтелектуальної власності; пошук користувачів та укладання з ними договорів щодо розпоряджання майновими правами інтелектуальної власності. Дослідження зосереджено на договорах, пов'язаних з інтелектуальною власністю: ліцензіях, ліцензійних договорах, договорах про відчуження майнових прав, договорах франчайзингу, договорах про нерозголошення, договорах про співпрацю.

Ключові слова: комерціалізація прав інтелектуальної власності, інновації.

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КОММЕРЦИАЛИЗАЦИЯ ПРАВ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ КАК ОСНОВА ИННОВАЦИЙ

Введение. Инновации невозможны без интеллектуального, творческого труда авторов, изобретателей и других субъектов данного процесса. Украина стремится стать технологически развитым и конкурентоспособным участником международных отношений.

Проблематика. Коммерциализация прав интеллектуальной собственности рассматривается как основа инновационного процесса, которой присуща постепенность. Большинство выданных в Украине патентов не обеспечивают прибыльности технических решений, тогда как коммерциализация прав интеллектуальной собственности является важной составляющей инновационной экономики Украины.

Цель. Раскрыть понятие коммерциализации прав интеллектуальной собственности.

Материалы и методы. Проведен анализ понятия и составляющих коммерциализации интеллектуальной собственности.

Результаты. Доказано, что коммерциализация прав на результаты интеллектуальной деятельности, как системное явление, представляет собой комплекс общественных отношений (экономических, юридических и т.д.), обеспечивающих восприятие этих прав как товара, потребность в котором других лиц дает возможность правообладателю получать прибыль вследствие введения этих прав в оборот. Коммерциализация прав интеллектуальной собственности характеризуется постепенностью, что отображается в этапах, которые реализуются один за другим.

Выводы. Выделены следующие этапы коммерциализации интеллектуальной собственности: идентификация объекта интеллектуальной собственности и получения охранного документа; маркетинг (идентификация товара, анализ рынка, каналы сбыта, ценообразования, аудит), включающий помимо указанного выше продвижения (рекламы) товара/услуги с применением объекта интеллектуальной собственности; оценка объекта интеллектуальной собственности (по затратным, рыночным (сравнительным), доходным методами оценки); страхование имущественных прав интеллектуальной собственности; поиск пользователей и заключения с ними договоров о распоряжении имущественными правами интеллектуальной собственности.

Ключевые слова: коммерциализация прав интеллектуальной собственности, инновации.