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Shtefan A. Some issues of application of the Association Agreement as the source of copyright of Ukraine

P. 5-16

The article covers the main aspects of the Association Agreement as a source of copyright and problems of its application.

On the example of the practice of the Court of the European Union, the criteria on the basis of which the law of the EU can be applied directly and without the implementation in the domestic law were established.

Based on the analysis of the rules of the current legislation of Ukraine, it was concluded that the Association Agreement is the part of the national legislation and is applied in the same manner as foreseen for the rules of the national legislation. In the context of copyright, the Agreement has primacy over domestic law provisions that contain rules other than those in the Agreement.

Since Ukrainian courts do not refer to the authentic text of the international treaty in a foreign language but to its official translation, the article analyses the legislation in this regard. It is established that in the law of Ukraine there is no provision which obliges to use only the official translation of the international treaty and prohibits the use of the authentic text of the treaty in another language in which it was concluded. However, if the party of the case indicates that the translation of the text of the interna-tional treaty is inaccurate and will refer to the authentic

text in a foreign language, the court will not take this into account. The article gives an example of such a case, where the claimant tried to draw the court's attention to the English text of the Association Agreement but the court used the text of the official translation.

There are some problems in the official translation of the text of the Association Agreement illustrated by two examples. In Part 2 of Art. 180 translators added the term «mathematical expression» which significantly influences the criteria for providing legal protection to computer programs while in the original text of the Agreement there is no such a term. In Art. 174 translators confused «right of making the work available to the public for the first time» and «right of communication to the public» and incorrectly translated the term «exhaustion of rights». As a result of these errors, a new content was formed which completely differs from the wording of this article in the authentic English text.

Due to the fact that some errors found in the official translation of the text of the Agreement have a direct effect on the legal relationships in the field of copyright, this means that the same legal relationship in the EU and Ukraine is regulated differently by the same rule of the Agreement. It is concluded that the official translation of the Association Agreement needs to be amended as the accuracy of the translation is very important for the application of the Agreement.

Key words: Association Agreement, problems of official translation of international treaties, copyright sources

Ulitina O. Features of copyright in the photographic works created during the model photoshoot

P. 17-24

The article is dedicated to the problem of joint-author- ship of the photographic work. Author analyses Ukrainian legislation and case law to answer the question, whether the photographer and model may be co-owners of intellectual property rights in photo. The author proves the possibility of joint authorship in this case, as it does not contradict the Ukrainian law.

The article contains the analysis of existing Ukrainian legislation in this field, which regulates copyright questions between the photographer and the model.

The author delineates the copyright of the photographer and the personal non-proprietary rights of the model involved in the photoshoot.

The article defines the place of the photomodel in the system of subjects of copyright. It is proposed to distinguish the model as subject of the photographic image. This definition may simplify the question of model's copyright on photographic work.

The author defines the features of the contract between the photographer and the model, outlining the main provisions that such contract should include, taking into account the interests of the photographer and model.

Key words: copyright, photography, joint-authorship, photographic work, agreement between photographer and model, subject of photographic image

Petrenko Y. Features of registration of copyright in Ukraine and other countries of the world

P. 25-32

The article talks about issues that, are associated with the

registration of copyright in Ukraine and other countries of the world. Analyzed sys- tems,that exist now, as well as the types and features of registration of copyright. Based on the analysis, recommendations were made on improving the existing system of copyright registration in Ukraine and proposed changes.

Key words: copyright registration, copyright formalities, original works, online registration, short phrases, pseudonym

Gorodetska N. Unfair Competition in the Market of Medicines

P. 33-39

The article deals with issues of legal regulation of unfair competition, its relation with violation of intellectual property rights. Attention is paid to the violation of the rights arising from the patent as acts of unfair competition, as well as the phenomenon of «patent trolling». At disclosure of this issue, attention was paid to the legislative regulation of the above issues, the letters of the Antimonopoly Committee of Ukraine and the decisions of higher courts in interpreting these norms, as well as on scientific articles in this area. Possible options for solving these issues are stated. Also, the article describes the ratio of unfair competition and violation of intellectual property rights in order to focus on cases of the application of a law in a particular situation, as well as study of the question how violations and abuses of rights affect the competitive environment on the market of medicines, which leads to a decrease innovations and patent values in the field of manufacturing of medicinal products.

Key words: unfair competition, competitive environment, violation of intellectual property rights, infringement of the rights arising from the patent, «patent trolling», abuse of patent rights

Zerov K. An injunction as a measure of copyright enforcement

P. 40-49

The article analyzes the content, peculiarities of application and types of an injunction as a measure of copyright enforcement and its impact on the level of copyright infringement with the use of the Internet.

An injunction in copyright cases on works posted online may consist of, for example, removing work from a web page content or in a web-blocking. Since the injunction is a measure of enforcement established by law and therefore meets the first criterion of the permissibility of restricting the right to freedom of expression provided for in Part 2. Art. 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms. At the same time, the injunction is measure of copyright enforcement and not a measure of liability, and therefore its application does not depend on the fact that the terms of limiting the liability of internet intermediaries and the existence of guilt in their acts are met.

The applying for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right as a measure of copyright enforcement is possible within the scope of current legal regulation in Ukraine, since the possibility of using a an injunction (including web blocking) is expressly provided in the Agreement on the association.

The use of web blocking as a type of injunction is an effective way of protecting and enforcing copyright and reduces the total number of visits to blocked sites, as evi-denced by statistical studies.

Keywords: copyright protection, web blocking, injunction

Sopova K. Expertise, reports of patent attorneys and other specialists in trademark cases

P. 50-58

The article analyses the expertise as a means of provingintrade- markcases, and other documents (reports of the patent attorney, reports of sociological surveys, reviews of expertise, etc.), which submit the parties in support of their claims and objections and to clarify circumstances relevant to the case. Also, cases were considered when courts came to the place of average consumers and independently established the fact of similarity of signs in such a way that they could be confused.

In trademark rights cases, there is a need for research based on the use of specialist knowledge and involvement as one of the means of proving the expertise. The features of trademark expertise are defined, which consists in the fact that trademarks are being researched in a complex of comparison of their characteristics, close connection with the goods and services for which they are registered, and from the position of their perception by the average consumer.

It was suggested that reviews of expertise, provided outside the procedure for reviewing the expertise's of court experts and expert studies, approved by the Ministry of Justice of Ukraine, should be assessed by the court as inadmissible evidence.

When establishing the similarity of signs by a court, it is necessary to justify this similarity in the decision with the reflection of all factors that can be relevant for es-tablishing such a circumstance.

Key words: court expertise, report of the patent attorney, review of expertise, report of sociological surveys, sign for

goods and services, trademark

Butnik-Siverskiy O. Theoretical aspects of the capitalization of intellectual property rights from the point of the dominant of neo-economics

P. 59-72

In the article the author presents the evolutionary stages of the interpretation of the essence of «capitalization» and generalizes the theoretical approaches to the definition of the economic category «capitalization», which are divided into objective and processable approaches. It is considered the term «market capitalization» and the process of transformation of available resources into a value that brings added value, which is capitalization. This approach makes it possible to distinguish separately real and fictitious, direct and reverse capitalization and to allocate capitalization functions.

It is substantiated the definition and it is considered the economic category of the capitalization of intellectual property rights as the value of intellectual property rights in the process of its commercialization, directed to making profits (added value). It is determined the value of the property rights in the asset of the balance. It is presented the statistics of world experience of a processable approach to capitalization. It is substantiated and considered the essence of real and fictitious, direct and reverse capitalization of intellectual property rights.

It is considered the expansion of the process of capitalization of intellectual property rights in the conditions of a corporate transaction, which is associated with the movement of intellectual capital in the direction of growth. There are determined the content of the corporate transaction, the owner’s corporate rights and the features of

intellectual capital investing into the share capital. It is considered the feature of fictitious capitalization of intellectual property rights (corporate transaction) and it is presented the statistics of the development of world market capitalization.

Key words: capitalization, intellectual capital, property rights, intellectual property, value, corporate transaction

Zaikivskyi O., Onistrat O. Intellectual property in the defense sphere

P. 73-85

The legislation of Ukraine, which defines the state policy in the sphere of defense, is considered in relation to the regulation of issues related to ensuring the realization of intellectual property rights in the process of improving the state defense capability. The necessity of the improvement of the legislation is clearly indicated in order to clearly identify all possible violations of these rights and ensure the inevitability of punishment for violations of intellectual property rights.

Without theoretical substantiation of the principles of forming a state policy on ensuring the state's defense capability taking into account intellectual property issues that affect and will affect all spheres of the state's life, it is impossible to provide defense capability, which determines the relevance of this publication.

In order to ensure the proper level of national security and defense of any state, it is necessary all central executive authorities should work continuously and systematically in peacetime.

To ensure an adequate defense level of the state, these measures should aim at the creation and implementation of

cutting-edge technologies in all areas, especially in the development of the objects of intellectual property rights. And this involves the creation and use of the objects of intellectual property rights. The effectiveness of this process mainly depends on targeted state policy on creating favorable conditions for the protection of intellectual property in the process of transforming the intellectual potential into a specific intellectual product, as well as ensuring equal conditions for the realization of their rights to all participants in the process and the inevitability of punishment for violation of intellectual property rights.

In order for the realization of intellectual property rights in Ukraine in the defense sphere to be in line with best principles and proper international practice, it is worthwhile to draw attention to the following:

- legislative guarantee of protection of intellectual property rights;
- a clear definition of violations of these rights;
- the inevitability of punishment for violations of intellectual property rights.

At the same time, analyzing the existing state of ensuring the realization of intellectual property rights in the defense sector of Ukraine, one can conclude that the current legislation is imperfect in these areas.

Key words: intellectual property, defense sphere, objects of intellectual property rights, violation of intellectual property rights, armament and military equipment, military-technical cooperation

Vorontsova K. The person who has received the right to practice in traditional

medicine as a subject of intellectual property right in the sphere of Health Care

P. 86-93

This article reflects the person who has received the right to practice in traditional medicine. The traditional forms of creativity and innovation must be protectable intellectual property to protect traditional remedies and indigenous art and music against misappropriation, and enable communities to control and benefit collectively from their commercial exploitation. However, unlike the other countries in Ukraine traditional knowledge is protected by conventional intellectual property systems. In our country there are not any specific systems for protecting traditional knowledge.

The traditional knowledge is generally regarded as collectively originated and held, so that any rights and interests in this material should vest in communities rather than individuals. In some cases, however, individuals, such as traditional healers, might be regarded as the holders of traditional knowledge or traditional cultural expressions and as beneficiaries of protection. So the subject of intellectual property rights on traditional knowledge is indigenous peoples, indigenous communities, local communities, traditional communities, individuals, as a group of people living in the territory, which differ from other community social cultural or economic living conditions, with their own traditions and customs legislation and in some cases individuals, such as traditional healers.

The living nature of traditional knowledge means that it should be protected by the special intellectual property legislation.

The author provides the idea to amend the legislation of

Ukraine and make a legal instrument would define what is meant by traditional knowledge who the rights holders would be, how competing claims by communities would be resolved, and what rights and exceptions ought to apply.

Keywords: intellectual property, traditional medicine, complementary medicine, alternative medicine, traditional knowledge

Maidanyk L. Notion and boundaries of objective form of expression of a work: analyze of European and Ukrainian approaches

P. 94-100

In article the concept of an objective form of expression of a work in copyright law is analyzed in connection with the approaches of the European Union and Ukraine. On the basis of the analysis of judicial practice, the topical issues of the possibility of legal protection of works that are perceived not only by human sight and hearing, but also taste and olfactory receptors are considered. Perception and reproducibility are defined as the key elements of the objective form of the expression of a work in the copyright law of Ukraine. The inability of legal protection of the taste of a food product by copyright is conductedbased on the practice of the European Court of Justice. The preciseness and objectivity of perception are determined as the criteria of the form of expression of the work in the sense of the EU Court. The legal protection of the smell is carried out on the basis of the positive practice of the Danish Supreme Court in protecting the smell. A comparison is made with the position of the European Court of Justice regarding the protection of olfactory trademarks. It is concluded that the objective form of expression is revealed through precise and clear perception of a particular work.

Key words: objective form of expression of a work, scent, taste, rulings of ECJ

Review of the monograph by Kushnir I. «Intangible assets of the construction industry and its influence on innovative development of Ukraine»

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