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Trotska V. Exceptions and limitations on property copyright according to the laws of the United Kingdom and Ukraine: a comparative analysis

The author in the article explores the provisions of «The Copyright, Designs and Patents Act», concerning exceptions to copyright (Copyright Exceptions).
The article describes the provisions of the Chapter III of the UK law «Acts Permitted in relation to Copyright Works».
It is established that Copyright Exceptions allow the use of works by any person that will not be considered as copyright infringement in compliance with the conditions specified by law. This formulation differs from the norms of national legislation.
Articles 21–25 of the Law of Ukraine define the norms on free use of works. In general, works may be used without the permission of the copyright subject and without payment of remuneration for compliance with the conditions specified in these articles of the Law.
Unlike national law, UK law provides exceptions where the use of work will not be considered as copyright infringement. This approach is considered the basis of the doctrine of «fair dealing». The doctrine defined by UK law is used to establish in practice in each case legality of actions of the person.
A comparison is made between «the free use» and «fair dealing». The difference between these concepts are established. Despite these differences, the doctrines of «fair dealing» and «free use » do not contradict each other. They are similar in terms of defining exceptions to copyright, when the property rights of copyright holders are limited, so the use of works by any person will not be considered as infringement of this right.
The article analyzes main exceptions, provided by the UK Act:

1. Exceptions in the interests of persons with visual disabilities.
2. Exceptions for educational establishments.
3. Exceptions for libraries, archives.
4. Exceptions for the purpose of parliamentary and judicial proceedings.
5. Exceptions to copyright in computer programs, databases.
6. Other exceptions.

The author describes in detail Copyright Exceptions that are new to national legislation.

Based on the analysis, the author draws conclusions. Unlike the Law of Ukraine, the list of copyright exceptions in the UK Law is expanded.

The law of this country takes into account almost all exceptions and limitations to copyright provided by European law. The conditions under which the use of a work by a person will not be considered as copyright infringement are quite detailed.

Unlike the law of the United Kingdom, the Law of Ukraine does not currently have such restrictions on property copyrights as «Making of temporary copies», «freedom of panorama», «reproduction of works for the purpose of parliamentary proceedings», «reproduction of works for demonstration or repair of equipment».

The current provisions of the Law of Ukraine about the free use of works need to be supplemented. Regulations about the free reproduction of works for study, reproduction of works by libraries, archives need to be clarified.

The author in the article analyses the other issue of application of copyright exceptions and provides proposals for amendments to national copyright law.

Key words: *exceptions to copyright, restriction of copyright, free use of works, doctrine of «fair dealing»*

Kashyntseva O., Trofymenko M. The Evergreening Study of

Ukrainian Pharmaceutical Market.

The article presents the results of the research on the part of «evergreening patents» in the pharmaceutical market of Ukraine focusing on the daft laws registered in the Ukrainian Parliament (Verkhovna Rada) of Ukraine. The authors analyse the criteria of patent abuse as obstacles to access to treatment, and analyse the novel initiatives aimed at overcoming such abuse. In particular, it concerns the patentability's criteria of inventions on pharmaceutical products, the possibility to oppose the applications on inventions by a person whose rights or interests are violated by a patent application and prohibition of patenting substances as the utility models.

At the level of the national legislation patent reform was initiated by the Parliament of Ukraine on the first reading by the draft Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine (on Patent Law Reform)» as of October 10, 2019. For the national experts, drafting the mentioned Law, the necessity to provide evergreening research in the field of health care was obvious from the 2014. In 2014 year, the National Academy of Law Sciences of Ukraine in close cooperation with NGO 100 % of Life started the global research – Harmonization of Human Rights and Intellectual Property Rights in the Field of Medicine and Pharmacy. We have to stress that only the evergreening patent research in the pharmaceutical market of Ukraine took near three years. The Research reflects that the gaps of the Ukrainian patent system which causes the possibility to grant evergreening patents have the straight impact on access to vital treatment. The methodology of the research is based on the Guidelines on Examination of the Patent Application in the field of Medicine and Pharmaceuticals based on the recommendations of the WHO and Guidelines for the Examination of Patent Applications Relating to Pharmaceuticals of the UNDP.

Thus, the subject of the research is 132 patents covering vital medicines in the field of HIV, hepatitis C, tuberculosis, oncology, rheumatoid arthritis and others. The

basis for the research is the followings: the patented single-source medicines, the part of which in the centralized procurements exceeded $ 100,000 in 2017 and the medicines that part of which in hospital and pharmacy procurements exceeded 50 million hryvnia (UAH) in 2017. The research also includes the patented medicines which are or which were not available because of the patent status.

Keywords: *patents for medicinal products, evergreening patents, abuse of intellectual property rights, human rights, right to life, right to health*

Kapitsa Y. Utility model protection – trends in the European Union and challenges for Ukraine.

The issue of utility model (UM) protection in Ukraine in 1993–2020 and the practice of the EU Member–States is considered. It is noted the problem of UM trolling and exceeding the number of applications in Ukraine for UM in comparison with inventions. It is associated with the expansion in 2003 of the UM object in addition to the device also to a process, substance, microorganism strain, plant or animal cells culture and limiting the criterion of patentability only to the requirement novelty and industrial applicability.

It is concluded that the adoption of the Law of 21.07.2020 № 816-IX is an important step to limit patent trolling. The Law provides for exclusion from the protection of the substance and the introduction of post grant opposition in the Appellate Chamber. However the Law does not solve the problem of patent trolling at the customs border and did not exclude process from the protection. Also there will still be the problem at the courts as well Appellate Chamber to declare a utility model invalid if the UM is a new but obvious technical solution due to the lack of inventive step requirement or lower requirements for inventive step.

The peculiarities of the protection of the utility model in the 15 old EU member states and the United Kingdom are analyzed. It is shown the tendency to increase level of

protection of UM in the EU. In 6 EU countries there is no UM protection. In 5 there is an inventive step requirement. In 2 countries protection is possible only for three-dimensional objects (Italy, Greece). In 2 countries (Finland, Spain) – lower requirements for the inventive step.
The directions of change of UM legislation in Ukraine are substantiated, including: Option 1: cancellation of protection of UM taking into account experience of Luxembourg, Sweden, Great Britain, Belgium, the Netherlands. Option 2: introduction of protection only for three-dimensional UM (protection is not provided to the method, substances, biotechnological inventions). Establishment of the criterion of inventive step the same as for inventions. Determination of mandatory examination of compliance with the criteria of patentability (novelty, inventive step, industrial applicability) before the enforcement of UM in the courts, customs, Antimonopoly Committee. Option 3. Definition of protection of utility model as a form of protection of the invention with similar requirements as in option 2.
Key words: *utility model, invention, approximation of legislation, enfircement of intellectual property rights*

Zaikivskyi O., Onistrat O. State intellectual property management in the sphere of National security and defense.
The state policy on the management of objects of intellectual property right in the sphere of national security and defense is considered.
Under the current conditions, national security is unconceivable without solving the problematic issues of intellectual property management and creating the necessary preconditions for the development of intellectual potential and its use for national security.
At present, the concept of national security is being expanded to include more and more spheres of public life. New security settings related to the scientific and technological revolution have started to play an important role.
Nowadays, issues of the formation of an effective state policy

for ensuring national security in all its spheres and manifestations are of great importance. An important component of the mechanism for the formation and implementation of state policy in the field of national security should be the provision of intellectual property management.
However, national security legislation does not provide for the development of a strategy or other programmatic document on scientific and technical security, which would envisage measures to ensure the protection of the scientific and intellectual potential of the state, competitive technologies available in the country.
The question at issue is the fact that the state has not yet developed a national strategy for the protection of intellectual property, which would provide the protection of interests and rights of all subjects of intellectual property rights, and especially the state. Although the attempts to develop such a strategy were carried out repeatedly.
The state system of intellectual property protection and the effectiveness of providing national interests with its structural elements, in particular in the field of national security and defense, are investigated. Current problems in this area are explored and suggestions are made to resolve them.
There exists a necessity for creation of the central executive authority, the main task of which should be the formation and implementation of the state policy on the protection and management of intellectual property, as well as the state body, which, on behalf of the state and in its interests, will execute the ownership rights of the objects of intellectual property rights that are in state property.
Key words: intellectual property, sphere of national security and defense, objects of intellectual property rights, armament and military equipment

Shtefan A. Evidence law as the element of the legal system.

In the science of civil procedural law, there is considerable interest in the study of evidence law. In some cases, the

evidence law is considered purely in the sense of the subjective right to prove the circumstances of the case but most researchers have attempted to determine the place of evidence law in the general system of law. However, the conclusions on this point are very different; the evidence law is proposed to be considered as both a legal institute, and as a branch of law, and as an independent formation. To characterize evidence law, it is necessary to determine what legal rules are parts of it, how they are interconnected, and how they are involved in the proving. This will provide a basis for answering the question of the place of evidence law in the system of law.

Evidence law is, first and foremost, rules of procedural law which establish the procedure for proving at all stages of it, determine the basic requirements under which procedural actions aimed at establishing the circumstances of a case must be made. The connection between the evidence law and the procedural law is obvious but proving in civil cases is directly influenced by substantive law.

Rules of substantive law are the basis for the formation of the subject-matter of proof. From these rules follows the main content of the evidentiary activity in the case and the relevance of evidence submitted to confirm the claims and objections of the participants in the case. Providing the form of committing certain transactions, the procedure for issuing various kinds of documents, the competence of different bodies to make certain decisions, the substantive law rules help to determine the admissibility of the means of proof. They also establish legal presumptions that affect the distribution of the circumstances to be proven between the parties to the case, the legal status of judicial experts, the procedure for conducting judicial examinations and the requirements for expert opinions. Therefore, the evidentiary activity in civil cases cannot be carried out with the application of the rules of civil procedural law only and requires the application of the rules of substantive law.

Despite this, unlike procedural law, substantive law does not

contain any rule which is applicable in every civil case. The subject-matter of the case, the relevance of the evidence, and the substantive element of its admissibility are largely derived from substantive law, in each case being quite different legal provisions. That is, while some rules of procedural law, in particular, Art. 76-81, 83, 89 of the CPC are applicable in proving in all civil cases, there is no universal rule of substantive law which would be involved in proving in every case without exception. Rules of procedural law regulate proving directly by establishing the rights and obligations of the subjects of proving, specific rules and procedures for the submission, investigation and evaluation of evidence. The rules of substantive law are included in proving selectively, their action is always individual and contextual in nature and limited to the resolution of individual issues. Therefore, it seems that the effect of the rules of substantive and procedural law in proving is as follows: the order of proving is governed by the rules of procedural law, and substantive law creates the preconditions for proving.

The rules of procedural and substantive law in evidence law are combined in a complex, rather than systematic way, since the set of these rules is not characterized by the construction inherent in the system. The set of these rules is not peculiar to the unity of the object and method of legal regulation, commonality in the use of the same institutions and reciprocity of influence, so evidence law does not belong to any of the elements of the system of law. This is a legal phenomenon, an independent complex formation which is based on the rules of procedural law and is characterized by a special order of application of substantive law.

Key words: *proving, evidence law, system of law*

Postryhan T. Legal aspects of the Indian model of science and technology parks and specific economic zones as the key elements of the innovation structure.

The article details important historical and legal aspects of the creation and operation of science and technology parks and

specific economic zones as the major elements of the innovation structure in India, a set of measures that stimulate innovation.
The author notes that in India much attention is paid to the formation of a common legal framework for innovation, established bodies, associations, funds that support companies.
The author reviews the legislation of India on issues of activities of science and technology parks and specific economic zones, their features as innovative structures in India, legislation on technological innovations, tax benefit, exemption of export operations from duties and export taxes.
The author traces the history of the development of legislation on science and technology parks and specific economic zones in India from the moment of their creation to modernity.
The article is an exposure of the research on the state regulation of India's innovation structure elements: research institutions, science and technology parks, and specific economic zones, problems in the legal regulation of activities, the reasons for the economic success of India as a whole and trends in the further development of elements of the innovation structure of the state.
The author examined the current state of science and technology parks and India's specific economic zones, the policy of tax and customs incentives for science and technology parks and specific economic zones, identified types of tax and customs benefits, the specifics of labor legislation, energy tariffs, preferential loans, and the overall process of state support for science and technology.
The article discloses the tax benefits available to the Software under government STPI scheme presented to promote software exports, which has helped make India one of the world's leading centers for software and business outsourcing.
Keywords: *science and technology park, specific economic zones, science, legal regulation, high technologies, innovation, legislation, tax and customs incentives,*

associations, funds

Osypova I. Economic rights to intellectual property rights objects, created on the basis of research agreements in higher educational institutions of Ukraine.

The article deals with the features of the distribution of economic rights between customers of basic and applied researches, research and technological development (RTD) and higher educational institutions, as executors of such researches.

During the study the author has analyzed general provisions of the Civil Code of Ukraine regarding the distribution of rights to the results of basic and applied researches, research and technological development (RTD) between the customer and the executor of such researches. In addition, the author has analyzed provisions of special legislation regarding the distribution of economic rights to scientific and scientific-technical (applied) results, which are IPR objects.

Based on this analysis, it has been found that the distribution of economic rights to IPR objects, which are the results of basic and applied researches, research and technological development (RTD), at the level of «customer – executor of such researches» will depend on: 1) the type IPR objects that will be created and 2) the sources of funding of such researches.

In relation to such IPR objects as inventions, utility models, industrial designs, copyright, layout designs (topographies) of integrated circuits, plant varieties, animal breeds and performances the following options for distribution of economic rights are possible:

1) in case of non-budgetary financing of basic and applied researches, research and technological development (RTD) – rights belong jointly to the customer and the higher educational institution-executor of such researches. This may be changed by a contract between the customer and the executor.

2) in case of budgetary financing of researches – rights

belong to the higher educational institutions-executor of such researches. In addition, the legislator does not provide for the possibility to change the said provision by contractually. At the same time, the customer of such research should be assigned the right to use IPR objects for free.
3) in the case of budgetary financing of the researches, while the obtained IPR objects are state secrets or objects obtained under a state defence order – rights belong to the customer of such research. This cannot be changed contractually either;
4) in the case of mixed financing (own funds of the higher educational institution and budgetary funds) – rights belong to the party that will be determined contractually by the customer and the executor of the basic and applied researches, research and technological development (RTD).
In the case of a scientific discovery, we can only talk about moral rights, namely – the right of attribution. Thus, the indicated object is outside of the scope of the rules regarding the distribution of economic rights.
As to phonograms and videograms, the economic rights to these objects will belong to that party to research agreements that will actually «create» those objects. This can be either the customer or the executor of such researches.
As to trade secrets, the economic rights will, as a general rule, belong to both the customer and higher educational institution – the executor of basic and applied researches, research and technological development (RTD). In this case, disposing of these rights will be carried out jointly. This can be changed contractually.
Also, suggestions to improve the legislation of Ukraine have been made.

Keywords: *economic rights; intellectual property rights; distribution of economic rights; intellectual property rights objects, created on the basis of research agreements in higher educational institutions of Ukraine; basic (pure research / fundamental) research; research and development (R&D, R+D, or R'n'D); research and technological development (RTD); intellectual property rights of higher educational*

institutions

Yarmoliuk A. Implementation of the open innovation model in the conditions of development of the digital economy.
The author emphasizes that the model of open innovation involves the search for creative innovative ideas, joint research and creation of innovations with partners and the strategic use of intellectual property rights. In this way, the potential of invention is used in solving the problems of innovation. The article notes that the model of open innovation involves increasing the return on their own research and development through the alienation of patents or the issuance of licenses for the use of intellectual property rights. However, the author identifies an important problem of information leakage, which is the object of intellectual property rights. Therefore, as noted in the article, an innovative enterprise must have control over intellectual property so that competitors do not profit from the use of innovative ideas of others. It is also necessary to form high-quality intellectual property support systems. In the article, the author details the role of intellectual property in promoting innovation within the concept of open innovation. Innovative technologies have been successfully commercialized with the strategic use of intellectual property rights. Intellectual property plays a key role in enhancing the competitiveness of innovative enterprises, preserving their innovative advantages and facilitating the process of bringing innovative technologies to market created within the framework of an open innovation model. Intellectual property also significantly helps external partners make informed decisions about the need to assist with technical knowledge and funding to overcome the innovative ideas of the Death Valley from the time of invention to the launch of a new product. So, the author emphasizes that intellectual property plays a significant role in facilitating access to early stage capital suppliers, including seed capital, business angels, venture capitalists, financial institutions that help the invention to

enter the market. In the partnership of innovative businesses, patents become a reliable source of additional income for small and medium-sized businesses.
Keywords: intellectual property rights, intellectual property, open innovation, innovative enterprise, innovative activity

Kovalenko I. Judicial corps formation as a factor of influence on the genesis of Ukrainian statehood in the ancient Russian era.

In this article the effectiveness of the judiciary in the period of ancient statehood was analyzed. A study of society's perception of the word «court» in the considered period, taking into account the philological and legal approach to the mentioned phenomenon. The possibility and peculiarities of the existence of a court as an out state institution, as well as the peculiarities of such an institution of the state are analyzed. Thus, the article examines the pre-state (community), state and church stages of the formation of the judiciary.
In particular, the pre-state stage outlines the features of certain categories of disputes, such as criminal or civil matters. In addition, the requirements for persons who had the right to administer justice in the East Slavic tribes were grouped and the following main features were identified: generic, psychological, unconditional. The dependence of the judiciary formation on religious and political factors has also been established. At the same time, a characteristic feature of the period is the proximity of the judiciary to the people.
A special focus in this article was given to the period of the emergence of the state. This stage radically changed the views on the effectiveness of the management method, which also influenced the change of views on the administration of justice. However, this period is characterized by the weakening of the judiciary as an independent branch of government, due to the concentration of managerial powers in the hands of the feudal lord, respectively, there was no clear

list of requirements for the position of judge. The period under study is characterized by the following features of the procedure for the formation of the judiciary: the administration of justice was strictly dependent on the power that belonged to the prince; judging has become a privilege and sometimes a lucrative business; the formation of the judiciary depended significantly on the level of administration of justice, because the community courts for a long time operated in parallel with the princes.
In addition, in this article the period after the baptism of Russia by St. Vladimir in 998 was analyzed and investigated. After this event in the territory of modern Ukraine, along with the princely court, the ecclesiastical court began to act at the same time.
Key words: *court, judiciary, institute of state power and justice, pre-state, state and church stages*

Kovalenko Y. Extrajudicial remedies for the right to a domain name.

Today, each member of the business industry in one way or another presents his company, his product or services he provides on the World Wide Web. The main purpose of the company in the internet is to create and use its own website to provide information about their product and to find a potential buyer, as well as demonstrate their advantages and how they differ from their competitors. The main purpose of registering a specific «domain name» is to create favorable (convenient) conditions for the buyer who wanted to get acquainted with the company or its range. After all, if a domain name is associatively similar to the name of an individual company, then it will be much easier for the buyer to find the website of such a company than through a search using search engines.
Business representatives do not always succeed, especially if the name (trademark, brand) of the company is widely known, or if such a company has become a «victim» of unfair competition. This creates controversy over which parties are interested in

resolving as quickly and cheaply as possible.
This is greatly facilitated by the work of the World Intellectual Property Organization and a number of documents, among which the leading are «Principles for Dispute Resolution on Identical Domain Names» and «Principles of Uniform Rules for Dispute Resolution on Domain Names» (UDRP), adopted by ICANN. However, their analysis, as well as the analysis of law enforcement practice, allow us to speak not only about the effectiveness, but also about certain shortcomings of the proposed ICANN procedure for resolving disputes over domain names, which entail ambiguous dispute resolution practices.
The analysis of the regulation of protection of rights to the domain name is carried out with the prescriptions of the «Principles for the resolution of disputes about the same domain names» and the «Uniform Domain Name Dispute Resolution Rules» (UDRP) adopted by ICANN. An attempt is made to highlight the advantages and disadvantages of an out-of-court procedure for resolving disputes over domain names and suggested possible ways to improve such a system in Ukraine.
Keywords: *domain name, UDRP, ICANN, registrant, provider, claimant, respondent*

Stryzhevska A. The concept of privacy of telephone conversations conveyed by means of communication (Article 163 of the Criminal Code of Ukraine).

The article investigates the problem of criminal law nature of the concepts of telephone conversations, the secrets of such conversations, as well as deals with certain issues of the concept of telephone conversations conveyed by means of communication, analyzes the relationship between the concept of «conversations» (conversations made by telephone) and «objects» for working with which telecommunications (electroc ommunications) and telecommunication networks are intended.
You can distinguish between legal and factual features.Legal features are due to the fact that such conversations are covered by the law of personal non-property rights and are given the status of secrecy.The factual features of telephone

conversations are due to the fact that such conversations are the activities of at least two persons involved in the conversation, on the exchange of information between them, have a specific form with a certain meaning, carried out by appropriate means of communication . Under such conditions, telephone conversations, in order to indicate the content of the subject of the crime under Article 163 of the Criminal Code, must meet the following mandatory requirements: 1) reproduce certain activities of a person that lasts for some time and exchanged participate in such a conversation (exchange of information); 2) have a specific objective form (verbal, the form of sounds, signals, messages, the so-called "silent consent", etc., but which are somehow exchanged with a certain meaning, perceiving such a meaning, several participants in the conversation); 3) have a certain meaning (ie, regardless of the chosen form, the conversation must contain specific information that is exchanged by persons involved in it, and who perceive (realize) the meaning of such information); 4) be transmitted by certain means of communication (by telecommunications, telecommunications networks). If the conversation does not meet at least one of these requirements – the subject of the crime (telephone conversation), provided for in Article 163 of the Criminal Code – will obviously be absent.

Keywords: *means of communication, violation of privacy, telecommunications.*