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Zaykovskiy O., Onistrat O. Protection of intellectual property as a factor of quality assurance in the development of weapons and military equipment.

P. 22–33

Nowadays the question of modernization of existing and the development and implementation of modern weapons and military equipment based on the latest scientific and technological achievements; ensuring the protection of intellectual property created by the state budget, implementation of promising scientific developments into production; technology transfer; encouraging further development of scientific potential is urgent for Ukraine’s defence capability. Therefore one of important issues that requires constant attention and support from the state, is the further development of intellectual property protection in military and technical sphere.

Every newest development by definition includes intellectual property rights based on which these developments are created. Therefore, if the state develops arms and military equipment, it must ensure and protect its rights on the objects of intellectual property created while developing new designs of weapons and military equipment. It is the military and technical sphere where the objects of intellectual property are created; they belong to the sphere of national security and defence, and the state is obliged to ensure their protection and ownership of these objects. This will allow increasing the competitiveness of the domestic defence industry and will make impossible any claim under the mass production of weapons and equipment for their own needs and for export.

Despite the visible progress made in recent years to ensure the legislative protection of intellectual property, its

imperfection is still one of the factors that hinder the creation of an effective system of intellectual property in Ukraine, especially in the military and technical sphere.

The problems of intellectual property protection are systematic and they are in several interconnected areas: political, legal (legislative), economic and administrative.

Practice in application of law has identified a number of issues related to ensuring effective protection of rights for objects of intellectual property both generally in the country, and especially in the military and technical sphere.

The increasing role of patent and legal protection of new technologies and technical solutions causes the need to improve the system of legal protection of intellectual activity results, especially those related to national security and defence.

Legal protection creates a basis for protecting the interests of authors, customers and manufacturers of armament and military equipment for the results of intellectual activity in the process of their treatment, which is governed by civil law.

One of the most important is the question related to the distribution, acquisition and implementation of rights for objects of intellectual property that are created by the state budget, and their entry into economic circulation.

The existing legislation of Ukraine on Intellectual Property provides that the conditions of the distribution of rights for intellectual property should be set out in the agreement (contract) for performance of works.

However, the particular owner of the rights for objects of intellectual property is not clearly defined.

According to the legislation obtained scientific-technical

products can be transmitted to economic entities (users of the product) for practical application in compliance with the rights and economic interests of the state, order performers and owners of property and moral rights for the objects of technology and intellectual property objects created in the course of order. Procedure and conditions of the transfer and use of rights to scientific and technical products are determined by agreements between the customer, the performer and user of this product.

Intellectual property protection in military and technical area is performed generally as in the state as a whole, according to the same laws and the same procedure, but has its own peculiarities.

One of the main reasons for the lack of efficiency of state influence on the scope of intellectual property is the absence of a clear interaction between state authorities at all stages of development and implementation of state policy in the field of intellectual property.

Especially significant influence thus have government customers for weapons and military equipment.

The Ministry of Defence of Ukraine is one of the largest scientific-technical customer of military, dual-purpose and special production in Ukraine in the process of development of which the objects of intellectual property are created. Ensuring legal protection and effective use of such objects is an essential element at all life cycle stages of objects of intellectual property rights in the Ministry of Defence of Ukraine.

Key-words: intellectual property, military sphere

Khomenko V., Moskalenko S., Kirin R., Khomenko A. Chess games as an object of copyright.

P. 34–42

Chess was already almost one and half a millennium but ancient game still enjoys extraordinary popularity and conceals many secrets.

From the second half of the nineteenth century began to be held regularly offi-cial national and international competitions leading players. Began to appear chess professionals for which the chess was the main profession. From the beginning of the chess tournaments organizers understood that the chess games have their value for chess fans and they tried to earn some money. But when chess players also began to demand a share of revenue from the realization of own chess games, they are often received refusal.

Since then have passed more than one and half a century, but chess games have not gained recognition as works up to now.

Berne Convention, the Civil Code and the Law of Ukraine «On Copyright and Related Rights» don’t include the chess games in the objects of copyright. However, these laws allow for the presence of other works, which are not directly specified in them. Article 10 of the Law of Ukraine «On Copyright and Related Rights» gives a comprehensive list of facilities that are not protected by copyright. Chess games are not mentioned in it.

Thus, opponents of recognition chess games object of copyright can only refer to paragraph 3 of Article 8 of the Law of Ukraine «On Copyright and Related Rights». It says:

«3.The legal protection stipulated in this Law shall be extended only to the form of expression of a work, and shall not apply to any ideas, theories, principles, methods, procedures, processes, systems, manners, concepts, or discoveries, even if they are expressed, described, explained or illustrated in a work».

From our point of view it is very important to give the precise definitions. During the chess game player «scrolls» in the head a many different variants of the game. It forms the «content» of the game, which cannot be protected by copyright. Chess game as a work is a consistent set of moves. A record game in some chess notation is an objective form of expression of the work, suitable to obtain copyright protection.

The criteria for legal protection of the objects of copyright include:

1) the creative character of work;

2) the originality of work;

3) the objective form of expression of work.

Let us turn to the definition of originality, situated in one of the court documents, which shares a number of reputable professionals.

«Originality is understood as uniqueness, non-duplication in the case of parallel work: when two authors are working independently they cannot create identical original results. If as the result of their work anyway received the same works, they cannot be recognized as original and therefore not protected by copyright».

In our opinion, the possibility of parallel creativity in chess games do not affect the recognition them as the object of copyright in general. In this context, we can talk only about the specific individual chess games that proved to be unoriginal as a result of parallel work. Of course, if the lack of originality in such chess game is proved, it cannot be protected by the copyright.

Thus, the denial of copyright protection based on the possibility of parallel creativity should be limited to certain specific cases, but not at all creative direction in

general.

All of the above gives us reason to believe that the relatively high probability of achieving the same result with the creation of creative chess games cannot be a reason for the refusal to admit them subject to copyright.

Keywords: copyright, criteria for legal protection, originality, chess, chess games

Matskevych O. Directive on audiovisual media services and legislation of Ukraine on copyright

P. 43–50

The analysis of EU Directive for Audiovisual Media Services (Directive 2010/13/EU) and the overview of its provisions are made.

The author pays attention to the aim of the Directive 2010/13/EU adoption, terminology of the document, criteria for their classification into linear and non-linear («on demand services»). It should be noted that Ukrainian legislation does not contain provisions regarding the regulation of services «on demand».

The provisions concerning exclusive rights and short news reports in television broadcasting (Chapter V of the Directive 2010/13/EU) were under more detailed study of the author due to their connection with the sphere of copyright and related rights.

The comparative analysis of provisions Ukrainian and European legislation was made as well. As result a conclusion was made that terminology used in current Ukrainian laws differ from that used in the Directive 2010/13/EU.

Chapter VII of the Directive 2010/13/EU is devoted to

television advertising and teleshopping. Some of the norms set out in the chapter coincide with correspondent norms of Ukrainian legislation namely with the provisions of the Law of Ukraine «On Advertising».

Key words: Directive 2010/13/EU, copyright, broadcasting, audiovisual media services

Kovalenko T. Trademark and copyright

P. 51–58

Aiming to originality, some manufacturers want to use the slogans and pictures as a brand. The result is that this brand will combine multiple security systems.

The objective of the article is to examine the examples of trademarks and copyright objects, to consider their proper use, the advantages and disadvantages of registration of trade marks and works.

The article aims to highlight the specificity of registration of trade marks and copyright.

Key-words: trademark, copyright

Shtefan O. Certain aspects of plagiarism

P. 59–67

This article is devoted to disclosure of certain expression of plagiarism. The attention directly focuses on plagiarism in science. The article proves the artificial nature of the term «academic plagiarism» because the scope of the offense does not affect the qualifying attributes of plagiarism and bringing to responsibility of perpetrators under the legislation of Ukraine. The analysis of the legislation on

copyright and litigation allowed the author to conclude that plagiarism is a complex infringement, which violates moral rights of an author of a work as well as property rights of copyright holders as a result of trespass on the object of copyright by illegal (wrongful) use of the work via promulgation (the publication) in full or partially under the name of a person who is not the author of the work. It is also proved that to initiate the defense of copyright, violated as a result of plagiarism, only can copyright holders owning personal and/or proprietary copyrights. They are party in interest in protecting their rights and interests.

Keywords: copyright infringement, plagiarism, plagiarism in science, academic plagiarism, the subjects of copyright

Shtefan A. Scientific Plagiarism: the Correlation in Using of Idea and Form of Expression of the Work.

P. 68–79

The plagiarism is promulgation (publication), in full or in part, of the work under the mane of a person who is not the author of this work. Criteria which create the legal structure of the plagiarism in their interrelation are:

1) the unlawful use of a copyrighted works or works that have fallen into the public domain after the copyright has expired. The unconscionable loans of works that have never been protected may consider as s violation of moral and ethical standards but not as a violation of copyrights in the absence of legal protection;

2) the denotation the name of another person than that one who created the work. The quotation with the correct reference to the author and the source of borrowing, even if the extent of this quotation makes up the majority of the work, does not relate to the plagiarism;

3) the promulgation of the work which reproduces another author’s work in full or in part. Creation of an object, which reproduces another author’s work in full or in part, is not the plagiarism. The violation of copyright occurs when a person carries out actions aimed at the public disclosure of this object.

Plagiarism is using of work and not of idea. When idea is using, works based on it can have some extent similarity but there will be differences in the elements of expressions. Any work has at least one idea that the author wants to convey to the public but the idea never holds a work or its individual elements. The difference between the idea and the form of expression of the work can be illustrated as follows: the idea is answering the question “what is this work about”, “what the author wanted to convey to the public” and the form of expression of the work – “how the author did it”. If we deal with the plagiarism, it is always the using of not an idea itself but of its concrete expression in the form of expression of a particular work.

Scientific works mostly have literary or oral form. But existing theory of elements of the form of expression does not approach to scientific works as far as there are no story plot, episodes, dialogues, characters in scientific works. This led to the need to develop the separate theory of elements of the fore of expression of scientific works.

Legally indifferent elements that are not protected and can be freely used by others are:

1) the theme of the work;

2) methods of scientific research (knowledge) that existed before the investigation started;

3) materials that existed or were known before the investigation started.

Legally significant elements covered by copyright protection are:

1) the language. In a broad sense it is the state language, minority language, foreign language, in the narrow sense it is the special aspects of author's language, of its structure, a set of linguistic resources used in the work;

2) results of research in the form of hypotheses, arguments, reasoning, opinions, proposals, recommendations, conclusions and other achievements obtained by the author during the research and/or as a result of its implementation.

The plagiarism of scientific work is the using of research results that have always expressed through the language of the work. The language in the broadest sense cannot be borrowed but its legal value is manifested in the possibility of the separation of the original work and its translation. The peculiarity of the author's language (the language in the narrow sense) facilitates the identification of borrowing and can detect plagiarism in many cases.

Key-words: work of science, scientific work, plagiarism, idea, form of expression of work

Prokhorov-Lukin G. Problems of definition and damages in civil cases concerning the infringement of intellectual property rights in the EU.

P. 80–87

This article is dedicated to questions of legislation and judicial practice of the EU countries about the compensation of damages in cases of infringement of intellectual property rights. The article deals with issues related to implementation of the EU's Directive on the Civil Enforcement of Intellectual Property Rights in legislations and courts'

practice of Member States. In this respect, great importance is the definition of the principles and purposes of compensation for damage caused by violations of intellectual property rights. In this connection, great importance is the definition of the principles and purposes of compensation for damage caused by the infringement of intellectual property rights as well as approaches to the determination of the extents of damages and compensations.

Great practical importance has the position that the state should ensure that all elements of direct, indirect and consequential economic consequences to the right holder that result from an infringement are compensated by damages in civil cases, regardless of whether the infringement has taken place on a commercial scale. Also the state should provide that lump-sum damages, reflecting all negative economic consequences that the right holder has been reasonably found to have suffered, are available at the right holder's discretion at least as an alternative to any lost profits that can be proved.

Legislative and judicial practice of the EU countries in matters of compensation for damage caused by the violation of intellectual property rights, without any doubt, should be used to improve the legislation and judicial practice of Ukraine.

Key words: intellectual property, the EU legislation, litigation, damages

Luzan A. Problems of legal protection of inventions in European scientific and technological space

P. 88–95

This paper examines issues related to the legal protection of inventions. The author notes the important role of innovative

products and their impact on the evolution of the whole of humanity. On the basis of statistical data traced the relationship between the level of inventive activity in the leading countries of the world and the state of their economies. Attention is paid to how to develop the patent system in the European and other States.

In this article, the legal protection of inventions considered as a system of methods which contribute to the creation and patenting of inventions that further protects the legitimate rights and interests of their authors. This system has a way to certain features in each European country, which contributes to healthy competition in the market development of innovations on a given territory.

In more detail the author considers such European countries as Germany, UK, Ireland, Poland. The main laws and legal acts that regulate legal relationships entered into by entities in order to obtain a patent for the invention in those countries. Highlighted some of the features of patent regimes, which have a positive impact on the improvement of inventive activity. These features are related to national and regional development strategies, the interaction of subject who are involved in providing legal protection of inventions, judicial and other protection of the rights of inventors, tax benefits.

On the basis of the information received and taking into account the current state of legal protection of inventions in Ukraine, the author proposes a number of measures which will contribute to the holding of invention in Ukraine.

In general, the main purpose of the article is to draw the attention of public authorities to the problems of invention in Ukraine and to suggest possible solutions to these problems.

Keywords: invention, patents, civil-legal protection, patenting

Revutskyi S. The development of globalization processes in the world economy in the 2nd half of the XX–XXI century.

P. 96–102

The article discusses the development of the processes of globalization in the world economy in the 2nd half of the XXth century – the early XXI centuries. The author examines the economic phenomena that characterize the globalization of the economy in the XXI century, and also the spheres of the global economy at different levels of globalization.

Key-words: globalization, globalization, national innovation system (NIS)

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Zaykovskiy O., Onistrat O. Problems of intellectual property protection in military technical sphere.

P. 5-16

Nowadays the question of modernization of existing and the development and implementation of modern weapons and military equipment based on the latest scientific and technological achievements; ensuring the protection of intellectual property created by the state budget, implementation of promising scientific developments into production; technology transfer; encouraging further development of scientific potential is urgent for Ukraine’s defence capability. Therefore one of important issues that requires constant attention and support from the state, is the further deve-lopment of intellectual property protection in military and technical sphere.

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Key words: militar techincal sphere, intellectual property

Yakubivsky I. The partial transfer of the intellectual property rights. Ukrainian legislation provides possibility for full or partial transfer of the intellectual property rights.

P. 17-24

But there are many problems connected with the partial transfer of these rights. The following scientists studied the specified topic: A. Amalgendy, V. Dmitryshyn, E. Gavrilov, O. Gorodov, V. Kryzhna, O. Zhylinkova and others.

In accordance with the Civil Code of Ukraine (articles 427, 1113) the intellectual property rights could be transferred in accordance with the law completely or partially to another person. Also the Law of Ukraine on Copyright and Related Rights contains some rules which provided partial disposition of property copyrights (article 31) and related rights (article 39–41). In accordance with these prescriptions the contracts for transfer specified rights have to provide the terms about modes of object using. The legislation about industrial property has a different regulation. In general by «a contract for transfer of property right» specified rights

transferred to the purchaser in full value. There is one exception in legislation about trademarks. The contract can provide partial transfer of trademark rights in part of goods and (or) services.

We consider that intellectual property rights cannot be transferred separately. Although, Ukrainian Civil legislation provides the possibility of transferring property copyrights and related rights concerning to some modes of object using, we think that construction of license contract corresponds to this situation.

Thus the question about divisibility of the intellectual rights objects is quite interesting. Some of these objects are divisible and it makes a possibility of the partial transfer of the intellectual property rights.

First of all it concerning to the copyright and related rights. Copyright legislation uses the term «part of work» (article 436 of the Civil Code of Ukraine, articles 9, 13 of the Law «On Copyright and Related Rights»). And it must be underlined that the part of work, which has independent significance, is as copyright object, as the work itself. So author can transfer to another person property copyrights to such part of work. For example, the author of song can dispose of his property rights to lyrics, but leaves to himself the property rights to music.

The partial transfer of intellectual property rights is present, when the right-holder transfers his trademark rights concerning to the part of goods and (or) services. In this event State Intellectual Property Service of Ukraine provides separate registration of trademark concerning to those goods and (or) services for which there was a transfer and issues a new certificate. Although, as a specified sign trademark still be the same, as an object of protection trademark is divided into two ones, which have their own values of legal protection.

In patent law sphere such partial transfer of the intellectual property rights is impossible, in general. Some scientists express an opinion, that the intellectual property rights to the inventions, utility models and industrial designs can be transferred in part of their features. But this view is quite debatable because the value of legal protection is defined by essential features, which are fixed in independent claims (for the inventions and utility models) or in set of images of the product (for the industrial designs). So right-holder cannot to dispose his property rights concerning to the part of essential features because otherwise the essence of object will be lost. Also he cannot transfer his rights with regard to the features, which are provided in the dependent claims, because these claims don’t contain the essence of object themselves.

Keywords: intellectual property rights, contract for transfer of the intellectual property rights, modes of intellectual property object using

Shtefan O. Protection of intellectual property rights in the use of 3D technology.

P. 25-31

The paper examines the impact of 3D technology on the reform of intellectual property rights legislation. The essence of 3D printing and the opportunities that a person gets from reproduction of any thing in any from in any material is covered directly. The author analyses the current legislation in the sphere of intellectual property rights on the possibility of «free reproduction» of objects via 3D printing. The study leads to the conclusion that in this context the law does not meet the current level of equipment and technology and is helpless in carrying out the functions of protection and defence of intellectual property. Based on the analysis of

3D printing capabilities and its areas of application the article describes ways to improve current legislation on intellectual property rights.

Keywords: 3D model, 3D printer, 3D technology, intellectual property, intellectual property rights, objects of copyright, industrial property, free play of intellectual property, intellectual property infringement

Trotska V. Free use of works in order to ensure the functioning of the state mechanism.

P. 32-41

The article contemplates the questions of free use of works for the purpose of ensuring public security, administrative, parliamentary or judicial proceedings.

The author analyses the compliance of the norms of national legislation to the norms of European legislation, in particular, art. 5 (3) of Directive 2001/29/EC of the European Parliament and of the Council on the harmonization of certain aspects of copyright and related rights in the information society. According to this article, Directive defined limitations and exceptions to copyrights when permitted free use of works for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings.

In accordance with the legislation of Ukraine in the field of copyright and related rights there are only free reproductions of works defined in judicial and administrative proceedings. At the same time, there are no norms on the possibility of free use of works for the purpose of ensuring:

parliamentary proceedings;

public safety.

In this regard, the article details considered these cases. The author explores the terms of «parliamentary procedure» and «parliamentary proceedings», defines their relationship, and provides suggestions for applying these concepts in the legislation. However, the author explores terms of «public security», «national security», examines the definition provided in the legislation of Ukraine, considers their signs and provides suggestions for the prediction of the term of «public security» in the legislation in the field of copyright and related rights.

Author focuses special attention on the litigation dispute relating to the use of works in order to ensure the functioning of the state mechanism. The author gives the examples of disputes considered in Austria, the United States and Ukraine. These cases related to the free use of works for the purpose of ensuring public security and judicial proceedings.

At the end of the article the author draws some conclusions.

The legislation of Ukraine should be brought into correspondence to the legislation of European Union, including a Directive 2001/29/EC of the European Parliament and of the Council on the harmonization of certain aspects of copyright and related rights in the information society. The author provides specific proposals to amend the legislation.

Keywords: author, free use of works, public security, parliamentary procedure, administrative and judicial proceedings

Sanchenko O. The concept of theatrical performances under the laws of Ukraine.

P. 42-48

The author examines the legal definition of theatrical productions as an object of intellectual property rights in the article. The author establishes that the legal concept consists of four main elements: a reference to the works of theatrical art formation based on another work – dramatic, musical or dramatic literature, the presence of a single plan and a specific name. The article analyzes details each element and based on that outline ways to further improve the legal definitions of theater productions as an object of intellectual property rights.

Key words: theatrical performance, object of intellectual property rights, theater, drama, performance

Shtefan A. Television Format: Nature, Content, Legal Protection.

P. 49-58

In 1970 the American researcher Robin Meadow drew attention to the fact, whether a fair and workable method exists which will allow format protection and at the same time preserve the free use of «mere» ideas. To find the legal guidance for the protection of TV formats, we must determine what TV format is, how it differs from other TV programs and which components of TV format are protected by law.

In scientific studies it is often indicate that a television format is that set of invariable elements in a program out of which the variable elements of an individual episode are produced. But any cyclic program has invariable elements (its own title and studio, sound and graphics, an identical plan of its creation) while in some issues producers may appear new different components. In my opinion, TV format easily stands out among all other existing objects. This identification is achieved by the fact that all components of the format form a solution, a combination that is not appropriate for any other

program. It should be at least one episode or plot move which, in the connection other elements, creates a new result, different from the known.

Also, as mentioned in studies, content that is strongly embedded in local and national cultures has a better chance to be successful domestically, but it is less likely to find interested buyers and enthusiastic audiences abroad. Therefore TV format is a program which has the ability to be adapted, localized for different audience than the audience of the country where format was created. Localization represents the erasure of foreign, abstract components and their replacement with specific markers of national belonging.

Television format may contain objects of copyright (script, director's staging, operator's staging, choreographic works, etc.) and related rights (phonograms), trademarks, patents objects (industrial design) and financial information, industrial, institutional and otherwise, which is a trade secret. All those objects are protected by law. But the idea or concept taken as format's basis may not be limited to use by others.

It is well known that copyright formed as a legal mechanism to ensure a balance of interests between authors and society and one of the factors of this mechanism is no monopoly on the idea. The development of scientific, artistic, technical creativity is precisely because the idea, separate from the works in which it has implemented, can be freely used by any persons in any country of the world. The idea is always abstract; it expresses the basic nature of the work. The full contents of a literary or audiovisual work, its episodes, characteristics of the characters, plot moves are not contained in ideas; idea summarized the plot of the work. Hundreds of objects can be created on the basis of the same idea but they all will be different, not identical. Copyright rightly does not apply on and theories, principles, concepts, methods, techniques, procedures, and other similar events, but

protects the form of expression of the work. The idea, therefore, answers the question «what is this work about», while as a form of expression of work – «how the idea embodied in the work».

The ability to protect ideas widely discussed for many years. We can often find advices on making a confidentiality agreement with the potential buyer. The International Association for the recognition and protection of formats (FRAPA) notes that the most effective way of protecting format is to document and record every step of its development. The industry has developed mechanisms outside the legal system to cope with TV format imitation. It includes first-mover advantages, social norms and gentlemen's agreements, active brand management, merchandising, dispute resolution systems, vertical integration, format portfolio building, tacit knowledge, and risk management, as well as changes in format types, elements, and production.

However, as noted by both Ukrainian and foreign experts, the best protection of TV formats is the understanding by television companies that TV format imitation badly affects on their reputation which has a direct impact on their position at the global media market.

Key-words: format of television programme, television format, legal protection of television format

Olefir A. Limiting of the scope of patent protection as a means of restoring competitiveness of pharmaceutical industry.

P. 59-67

In the article were investigated problems and particular ways of restoring the competitiveness of the Ukrainian pharmaceutical industry. Also were made several propositions of state regulation of economic relations that involve changing the legal regime providing patent protection with the

peculiarities of the pharmaceutical sphere.

Key words: intellectual property, innovation, patent, invention, utility model, industrial design, competitiveness, pharmaceutical industry

Chernyuk V. Science parks in Ukraine – condition and problems of activity.

P. 68–75

The article analyzes the situation and problems of science parks in Ukraine as part of the national innovation system. The legal basis of organization and operation of science parks is defined, the provisions of the current legislation that promote the development of their activities as a structural element of the innovative economy are considered. Implementation issues such as innovation in Ukraine and the problems it is characteristic of science parks are identified, and some solutions are offered.

One of the main problems is the decline in funding for scientific research and experimental development (R&D), which led to outflow of qualified scientific and technical staff from Ukraine, the decline of many scientific schools, the rapid degradation of the material and technical base of scientific and technological research, preferred implementation in Ukraine borrowed technology is not of the highest quality and so on.

There are also problems arising in the activities of science parks, which can be divided into two groups: obstacles in doing innovation as such in Ukraine and the problems it is characteristic of science parks.

The first group include:

- the absence of a clear policy on the integration of

science and business, which is embodied both in the constant change and duplication of functions of central executive authorities that deal with policy formulation and implementation in sphere of innovation activity and duplicating or performance measures of regulations and dispersion of resources the large number of small events;

- Ukrainian dominance in low-tech sectors of industry, characterized by stability in production and sustainability in technology that causes lack of interest of companies in these sectors in those newly technological solutions;
- underdevelopment as a direct (financing, co-financing of new businesses, grants, subsidies, etc.), indirect state support (tax relief, «vacation», etc.) innovation activity;
- the absence of funds in research institutions and higher education institutions on innovative infrastructure maintenance;
- the absence of encouragement of business entities to invest in applied research and development, as well as to modernization and technological renovation of enterprises.

The solution of these problems will benefit the development of science parks in Ukraine and their compliance of the international approaches adopted in sphere of innovation activity, in favor of integration of science and business.

Keywords: science parks, innovations

Androschuk H. Trade secret protection in the United States: economic power and enforcement practices.

P. 76-85

For examples of cases of misappropriation of trade secrets in

various courts analyzed the practice of protection of trade secrets in the United States, its economic impact on international trade, economics, companies and countries. To improve the efficiency of intellectual property protection is a diagram of operations for companies, designed for the protection of trade secrets and reducing the potential threat of theft.

Keywords: security, intellectual property, trade secrets, unfair competition, da-mages, economic espionage

Danylyuk A. Enforcement of the civil jurisdiction of the court on cases arising from intellectual property rights violations.

P. 86–94

The article examines the problems in the civil jurisdiction of a court in cases arising from the infringement of intellectual property rights. As far as exactly about these various disputes of jurisdiction applied in Ukraine, which creates numerous problems in practice. The article examines issues of determining the jurisdiction of the courts as a whole, taking into account the holding of judicial reform, approaches to the theory of law the concept of jurisdiction of the court. The provisions of civil substantive and procedural law on the protection of civil rights and freedoms are disclosed. The rules of the special legislation in the field of intellectual property are studied. Patent law, law on means of individualization and copyright are analyzed from the standpoint of securing in them of the rules of the violation of the rights and remedies, including – determination of jurisdiction of the courts. It is stated that the relevant legislation should be improved. At the same time, copyright law in general demonstrates a successful approach to the formation of the basic provisions for the protection of intellectual property rights. This approach denies the

statement of representatives of civil law science of imperfection, not systemic, chaotic norms of special laws regarding the protection of intellectual property rights as compared to the provisions of the Civil Code of Ukraine. As far as the provisions set out by the Law of Ukraine "On copyright and related rights" allow the parties of the litigation clearly navigate the contents of the rights and obligations arising from the dispute over the infringement of intellectual property rights. It is proved that the civil jurisdiction provides the best opportunity for the protection of intellectual property rights. This follows from the universal nature of the civil jurisdiction and from the properties of disputes on violation of intellectual property rights arising from civil legal nature of moral and intellectual property rights.

Key words: constitutional process, European integration, European legal standards, European legal values, democracy, rule of law, constitutionalism.

Yakovlev A. Constitutional process in the context of european integration of Ukraine: the legal aspect.

P. 95–103

The article investigates the specifics of the constitutional process in modern Ukraine in the context of its European integration. The author substantiates the role of the European legal values and legal standards in the process of modernization of the Ukrainian Constitution, improving the principles of constitutionalism. Particular attention is paid to issues of constitutional ensuring of sustainable democratic development of Ukraine, the creation of reliable and efficient mechanisms for ensuring the constitutional principle of the rule of law. The position and prospects of development of Ukrainian constitutional law in the light of the EU

recommendations implementation are analyzed.

Key words: constitutional process, European integration, European legal standards, European legal values, democracy, rule of law, constitutionalism.

Volynets I. Ethical and legal aspects of placebo.

P. 104–112

The subject of my research is the history of the term «placebo» (which dates back to the XII century). Pharmaceutical Encyclopedia of Ukraine states – placebo is a component of any treatment that is used specifically because of its nonspecific, psychological or psychophysiological effect or which is used because of its alleged aimed nonspecific effects on the patient, symptom or disease.

There are positive and negative effects of the placebo effect. The positive placebo effect is the improvement of health aspects after use of placebo, such as well-being or quality of sleep, indicators of cardiovascular or respiratory systems, feeling of joy, optimism, etc., And the negative placebo effect (nocebo) provides exactly the opposite changes: deterioration of health or disease, unwanted painful symptoms and so on.

Within my research I analyzed the norms of national and international laws that govern the ethical and legal aspects of the use of placebo in clinical trials. In particular, the Law of Ukraine «On Basis of Legislation of Ukraine on Health Care», Law of Ukraine «On Medicines», Good Clinical Practice – GCP, Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, World Medical Association Declaration of Helsinki Ethical Principles for Medical Research Involving Human Subjects, etc.

The main rule regulations, both national and international, consider the use of placebos is the inviolability of the human body, the securing of medical tests, without compromising health.

However, in clinical trials (according to GCP standards) the main focus for analysis is using placebo by so-called “blind” methods. Through Blinding / masking method one or more clinical trial participants did not know which of the assigned study drug they had been taking. Double blind method based on the fact that neither the doctor nor the patient knows which drug is applied. Triple-blind method is the case when the patient, the doctor and another doctor (the different person), who evaluate and summarize the results do not have information regarding the treatment, which the patient has undergone. Overall, the use of «blind» method minimizes the impact of observers (doctors or experts) as subjective factors on the reliability of the results of clinical trials, in order to avoid the belief that one method is better than the other one.

Examples of instructions for medical use of the drug in which the placebo effect is one of the ancillary effects of the drug.

Taking into account the abovementioned facts we can conclude that the placebo provides an opportunity to check how people overcome diseases with the help of their body mechanisms. If placebo is used only to help the patient, it can be considered ethical.

Key words: placebo, placebo effect, blinding method, clinical trial

№ 6 (86), 2015

The article concerns the issues of national reforming of pharmacy legislation, including the draft Law of Ukraine «On Medicines» on the point of the patients' rights and access to medicines. The article presents the position of Intellectual Property Research Institute of National Academy of Law Sciences of Ukraine as for the invalidity of the increasing of data exclusivity regime up to 11 years and patent link in the procedure of the registration of medicines.

We have to stress that there are no legal grounds for increasing data exclusivity regime than the existing five years, as it is defined in Article 9 of the current Law of Ukraine «On Medicines». According to Article 222 of the Agreement of Association between Ukraine, on the one hand, and the European Union and its Member States, on the other hand, the data exclusivity period determines in 5 years.

And also in accordance of Article 219 of the mentioned Agreement of Association the parties have recognized the importance of the Agreement on Trade-Related Aspects of Intellectual Property Rights and the Doha Declaration on the TRIPS Agreement and Public Health. We also have to stress that the Agreement on Trade-Related Aspects of Intellectual Property Rights does not contain any provisions on data exclusivity regime.

Why it is so important for Ukraine?

The pharmaceutical registration institutions usually considered the application for registration of generic medicines referring to the documentation (dossier), provided by the original producer and it is sufficient and does not require generic companies to conduct additional clinical trials on humans in order to obtain the data from such clinical researches required for state registration of medicines. Repeated conducting clinical trials contrary to the World Medical Association adopted ethical principles to be followed in conducting research involving human subjects and to the Good Clinical Practice.

The position of Intellectual Property Research Institute of National Academy of Law Sciences of Ukraine concerning the date exclusivity regime is corresponded with the position of WHO and UNDP which is determined in theirs documents.

Keywords: medicines, data exclusivity, pharmacy, patients' rights, human rights

Ennan R. General grounds of legal regulation of intellectual and creative activity

P. 10

The article deals with the features, attributes, types and nature of intellectual and creative activity. The correlation and delineation of the concept of intellectual and creative activities as well as philosophical foundations of the concept of creativity is done. The concept, features, legal nature, essence and significance of rights to results of intellectual activity are analyzed. Issues concerning the legal regime of exclusive rights, the specifics of intellectual products are studied. The theories and concepts of understanding the essence and nature of rights to results of intellectual activity are highlighted. The differences between the right of property (proprietary rights) and rights to results of intellectual activity are defined. The characteristic of

intellectual property right as a new independent comprehensive law is given, the subject and method of legal regulation of relations in the field of intellectual property is singled out. The legal status of subjects of intellectual property rights and the legal regime of intellectual property rights are highlighted. The notion of the content of intellectual property rights is investigated. The attention is paid to the analysis of functions and principles of intellectual property rights. The specifics of intellectual and legal relations (legal intellectual property) are also investigated. The analysis of sources of intellectual property rights is made.

Key words: intellectual activities, creative activities, intellectual property rights, exclusive rights

Vahonieva T. The concept of intellectual property rights and its components

P. 24

In the article the main categories of intellectual property right were investigated, some terminological problems of the conceptual apparatus of intellectual property right were analyzed and separate inherent characteristics of the objects were determined.

Copyright and related rights and industrial property rights are the part of the intellectual property right which is the part of civil law. In the regulation of intellectual property relations, the general civil law principles, methods and other mechanisms of their legal regulation are applied, therefore intellectual property right can be considered a sub-branch of civil law, but with its own specific for this sphere of regulation of social relations subject. The main difference of the intellectual property right from the proprietary right is the peculiarities of their objects.

It was found out that intellectual property right in the subjective sense is identical to the proprietary right and

lies in belonging to the owner of intellectual rights the possibility to own, use and dispose of the corresponding object. A characteristic feature of property right to the objects of intellectual activity is the origin of these objects and exclusivity of the rights on them, which lies in the exclusive right of the subject to authorize the use of the object of intellectual property to other people; to prevent an unauthorized use of the object of intellectual property right, including prohibiting such use.

The necessity of distinguishing the concept of «intellectual property right» from the concept of «intellectual property» and «intellectual activity» was determined. During the study of the objects of intellectual property right the term «creative activity» is often used, because creativity is a prerequisite for the creation of the objects of intellectual property right and in most cases is one of the main criteria for the emergence of intellectual property right.

It was determined, that the majority of the objects of intellectual property right are created as a result of intellectual creative activity, however these concepts cannot be considered the same and creativity is an optional criterion of referring the result of human activity to the objects of intellectual property right. It is almost impossible to formalize all these criteria regarding the characteristics of certain objects of intellectual property right through law. Because of this objects with different degrees of originality and novelty are protected by the same legal ways and means.

The result of the research is the conclusion concerning the need for a clearer definition of the general features of all objects of intellectual property right, legal confirmation of their defining characteristics that will enable to refer this or that new intellectual product to the objects of intellectual property right. The content and structure of each institute of intellectual property right should include a system of rights that will reflect the peculiarities of

possession, use and disposal by the appropriate people of the rights of the objects of intellectual property right.

Key words: intellectual property, intellectual activity, creativity, creative activity, intellectual rights

Kulinich O. Protection of the interests of a natural person in creation and use of the photographs and other artworks with his own image

P. 33

The features of safeguarding of the interests of a natural person in creation of certain types of artworks are described in the article. The classification according to the process of creating of works is carried out. The features of the works, the result of which depends on the ingenuity or the creative skills of the author, are determined. The features of the works, the creation of which affect mainly in the mechanical devices and the creative component is of secondary importance when capturing an image of an individual, are defined. The conclusion of the enhanced degree of protection of the interests of individuals while creating photographs and other works such like by the process of creating.

Keywords: image, the way of creation, work, a natural person, interest, protection

Taievska M. Actor of a theater as a subject of performance of theatrical art work

P. 40

The author examines the issues related to the definition of an actor of the theater as a subject of a theatrical performance of the work and analyzes the definition of an actor of the theater, as a creative person who is entitled to remuneration for their creative work and is the creator of the original performance of theatrical works (co-author of the director).

Changes in public perception of an actor of the theater led to the strengthening of its legal status as a subject of Performance of theater. But unfortunately, the legislator clearly defined property rights to his performance as an object of related rights, which in practice leads to some controversial issues, including recognition of the actor on the right to receive fair remuneration for their performance and even recognition of the right to an actor authorship of such performance.

Determination of the special status of the dominant actor of theater is in the plane of the disclosure features of his work, which is directly linked to the special nature of the work of theatrical art, which is a performance that does not live in the centuries as a work of plastic art, and lives only in the moment of creation. While theatrical performance goes, a work of art live theater, the play is over – and has only abode of her memories, impressions. The work of theatrical art exists only at the moment of its creation and only at this moment is perceived by the audience. The objective form of expression of a work of theatrical art is a «live» game theater actors as display their work at the time of creation of the work during the performance.

But it is believed that the director was the master of the theater. Beside it reduced the value even former actor and the actor’s personality charm somehow receded into the background. The figure of the director, invisible on the stage, in fact, filled the entire theater building could be seen for each existing character.

This attitude displayed to the person of the director and the legislation of Ukraine. In practice, the actor is the only employee that the will and the director receives a fixed salary for it, without his creative contribution to the work of theater.

The legislator must implement the rules of the Rome Convention

which was ratified by Ukraine and brought in line with a special law «On Copyright and Related Rights» regulations «On theater and theatrical work» concerning property rights actor to clear their determination. So, as of today property rights are governed by theater actor employment agreement without regard to these rights. The proposed changes in the law should serve society formation in the perception of the actor as the creator of his performance, not a tool in the hands of the director.

Keywords: actor, a work of theatrical art, producer

Trotska V. Foundation of the institute of free use works during XVIII–XIX centuries: historical and legal aspects

P. 46

The article contemplates the questions of definition in laws of different countries regarding free use of works during XVIII–XIX centuries.

This period covers the time from enactment of the first legislation in the copyright area – The Anna's Statute (1710) and before enactment of the first international treaty – The Berne Convention for the Protection of Literary and Artistic Works (1886).

The article contemplates factors that contribute to appearance of the institute of free use of works. First of all, the appearance of copyright connected with economic factors such as interest in the distribution of literary works. As the case might be, publishers had some profit from the use of such works. The laws of different countries were defined first norms that determine the exclusive rights of publishers and authors.

However, the exclusive (monopoly) rights lead to aggravation of social relations in part the possibility of free public access to the information, knowledge and cultural heritage

with educational, scientific and other purposes. These rights were absolute.

The way out of this situation is considered defining of some exceptions in the law, under which the use of work (or part of these works) by any person is possible without the permit of the author (his heirs).

In the nineteenth century the development of international relations needed a new approach to the legal regulation.

The application of the laws of separate countries was limited to its borders, so it was necessary to overcome the differences in legal regulation of relations.

The initiation of the international protection of copyright is relating to the adoption of the The Berne Convention for the Protection of Literary and Artistic Works (1886). Specific norms of free use of works are determined in this Convention.

In general, the article contemplates some cases of free use of works that were defined in the laws of different countries.

The author pays the special attention to consideration of the judicial precedents in this area.

In the end of the article author concludes the information.

The institute of free use of works overcame the long and difficult path of appearance. Internal and external factors influenced the appearance of this institute. The introduction of this institutive in the laws of different countries occurred much later than introduction of copyright protection to works.

Keywords: authors, publishers, exclusive rights, limitations of property rights, public and private interests, internal and external factors

Pyseva V. The requirement of biosafety for pharmaceuticals as

objects of industrial property: the current state of legal regulation

P. 56

The article concerns of biosafety requirements for pharmaceuticals and to the general criteria on the patentability of industrial property, in terms of balancing the private interests of the inventor and the public interest of community.

Under the Ukrainian legislation the term of biosafety understand like «state of the environment of human life in which there is no negative impact on its factors (biological, chemical, physical) the biological structure and function of the human person in the present and future generations, and there is no irreversible negative impact on biological object of natural environment (biosphere) and agricultural plants and animals».

In the field of pharmacy biological safety is the criterion that applies to biological and biotechnological origin drugs, i.e. products of genetic engineering.

Thus, the development of genetic engineering in the pharmaceutical industry, providing endless possibilities for scientists to develop new and improve existing drugs in constant evolution of humanity and the world of living organisms, viruses and other pathogens, imposes a duty to ensure maximum of biological safety of such products.

In turn, as an instrument to ensure the protection of high-tech research results in genetic engineering is used traditionally institute patent law, the object of which is genetically modified product as a result of human intellectual activity in the field of genetic engineering.

Patent law does not address the issue of biosafety as their ultimate purpose is intended to provide the legal protection

of results of intellectual activity and ensure the development of science and technology with the use of the invention while not violating the rights of the inventor.

However, the requirement for biosafety could theoretically be included in the eligibility criteria for the invention of the principle of humanity, which we believe is particularly appropriate objects relative to the pharmaceutical industry that use genetically modified organisms as part of composition of medicines.

Simultaneously, it is advisable to note that according to the general principles of patent law, obtaining legal protection in the mode of the invention or utility model, not a precondition to the introduction of the object of economic turnover or any other commercial, non-commercial use.

The patent is not an authorization document to display a particular product on the market, that allows you to maintain a balance of private and public interests, including aspects of biosafety, as the patentee under Ukrainian law, if the product to which the patent issued in this case medicament comprising of GMO, for use on the Ukrainian market, this drug need to be register as usual drugs as well as make data about them to a special database products that contain GMO components.

That’s why we can tell that in Ukraine, pharmaceutical industry in the maximum level provided compliance with biosafety that is ensured by the system of legal permission, of use all product which include GMO organisms regardless of the presence or absence of patent protection on certain drug.

Key words: biosafety, industrial property, pharmaceuticals of biological and biotechnological origin, genetic engineering, the principle of humanity

Revutskyi S. The concept and essence of innovative business incubators and directions of their activity in the global

economy

P. 65

The article deals with the concept, the essence of innovative business incubators of leading foreign and domestic economists. It reveals the main feature an innovative business incubator – support of small innovative business. Particular attention is paid to the activities of innovative business incubators.

Key-words: business incubators, innovations

Koval I. Payment of compensation for the illegal use of intellectual property object: legal nature and terms of application

P. 70

The norms of current legislation of Ukraine, that regulates payment of compensation (valid for one occasion money penalty) for the illegal use of intellectual property objects, are analyzed in the article.

The approaches folded in judicial practice of application of this method of protection of intellectual property rights are educed. On the basis of undertaken a study legal nature of indemnification as measures of responsibility of offender is certain. It is reasonable, that the terms of payment of compensation are unlawful conduct and guilt of offender. It is suggested to fix in the Civil Code of Ukraine provision stating that a one-time monetary penalty applies if the offender does not prove the absence of guilt.

Key words: protection of the rights, payment of compensation, intellectual property

Danyluk A. On the improvement of mechanisms for civil rights protection intellectual property

The essence of intellectual property protection in civil law aspects is considered in the article. The place of the protection of intellectual property rights in the national intellectual property system as a whole is determined. The influence of proper protection of rights at the development of national economy to creation of workplaces etc. is emphasized. It is emphasized that effective use and disposition of intellectual property rights is possible only at the creation of effective mechanisms to protect these rights. The examples of inception of ideology in international acts that govern sphere of intellectual property are shown. There are also examples of the recognition of the thesis in analysis of a condition of the national system of intellectual property and development of public policy in the implementation of the strategic objectives of the sphere. Also it is analyzed the national law and the theory of intellectual property rights in the part of singling of qualities, features and components of protection of intellectual property rights in civil law aspect. In particular, emphasizes that at objects of intellectual property rights (subject to certain exceptions) spreading methods of protecting the rights provided for in the Article 16 of the Civil Code of Ukraine. Also the author investigates ways to use alternative remedies for intellectual property rights. Particularly, it is concluded that although the dispute in the area of intellectual property can be resolved through of the trial, parties increasingly render their dispute to mediation under, arbitration and other alternative dispute resolution procedures. In particular, it is concluded that although the dispute in the area of intellectual property can be resolved through the trial, sides more often put forward their dispute within the framework to mediation, arbitration and other alternative procedures of dispute resolution. Thus, alternative procedures alongside patent legal procedure are the prospect the development of Ukraine in sphere of improving of the protection of

intellectual property rights. Also the conclusion is made about the necessity of improvement of norms of the Civil Code of Ukraine in terms of possibilities of application of measures of civil protection.

Key words: intellectual property rights protection, civil protecting of intellectual property rights, alternative dispute resolution

Humeha O. The experience of the European countries in the process of improving of civil protection of intellectual property rights

P. 87

In the article the experience of certain European countries in the process of improvment of the protection of intellectual property rights, particularly in civil aspect. The role of globalization in world process of innovation development for which intellectual property is an integral part is determined. The role of WIPO and its organs in the improving of national systems of legal protection and protection of intellectual property rights is emphasized. The activities of Consultative Committee on protection of rights WIPO principles of his organization and tasks are analyzed. The custody on the part WIPO issues such as strengthen the capacity and granting support for the advanced training of at national, regional and international levels, and in the interests of national agencies and officials who possessing experience protecting intellectual property rights is emphasized. The expediency of national presentations of modes protecting intellectual property rights is proved.

As examples modern experience of Spain and Denmark in the process of finding the ways of improvement of organization, mechanisms and procedures protecting intellectual property rights is adduced. Particularly, the author analyzes the Spanish experience, which has become a pioneer in creating the

coordinated institutional systems of combating with counterfeit products as at the national level and well as at the level of the European Union. The experience of Spain in the development of national bodies qualified to deal with intellectual property rights violations is investigated. In particular, the activities of the Intersectoral Commission on combating violations of industrial property rights. In addition, it is focused on the issue of establishing a European observation point of intellectual property rights violations. Also the author analyzes the experience of Denmark, looking for new tools and capabilities for improving the protection of intellectual property rights, including civil law direction. Fundamentals and perspectives of creation in Denmark the special Group on protection of rights on the basis of the national Office of Patents and Trademarks is investigating. Also it is analyzed the activity of Ministerial network to combat infringements of intellectual property rights, created and acting in Denmark. The specified analysis is aimed at finding ways to use foreign expertise to build a national system of intellectual property protection based on European standards and principles.

Key words: globalization, protection of intellectual property rights, the Advisory Committee on protection of rights WIPO, the European observation points behind violations of intellectual property rights

Kadyetova O. The experience of the Republic of Moldova in building of the national system of legal protection and defense of intellectual property rights and the ways of its application in Ukraine (civil aspects)

P. 96

The article analyzes the experience of the Republic of Moldova in building of a national system of legal protection and defense of intellectual property rights in order to use its positive consequences for Ukraine. Usefulness of studying of

experience of Moldova for building of the national system of legal protection and defense of intellectual property rights is substantiated. An emphasis is placed on the need for such elements as political freedom, the legislative framework, vital institutions and culture based on intellectual property, the existence and development of society oriented on intellectual property. It is emphasized that to detect the true value of intellectual property must also be the professional, institutional, legal environment etc.

Experience of Moldova is studied both through the prism of national legislation and some institutional elements working in the system of coordination of their efforts to achieve the defense of intellectual property rights. It is proved the usefulness of the adoption in Ukraine of the National Strategy in the field of intellectual property. For this aim the experience of Moldova, in which when forming similar strategy activity focused on basic purposes is analyzed. The author analyzed the achievement of such goals, including: forming a balanced legislation in the field of intellectual property; strengthening the institutional framework of intellectual property and conducting information-education campaigns among the public. The position of special legislation in a field of intellectual property including in part of defense of intellectual property is analyzed. Attention was addressed to the practice of application of law in the process of providing of defense of intellectual property rights, including various legal aspects such defense. National policy orientations in this area are determined. As an example of successful coordination of joint efforts of the authorities, rights holders and the public the activities of the Supervisory Committee over compliance of rights of intellectual property, that is working in Moldova are given. Conclusions are done about the ways of using the experience of Republic of Moldova in Ukraine.

Key words: intellectual property, defense of intellectual

property rights, a national strategy in the field of intellectual property

Orlyuk O. International educational program «Idea, utility invention, innovation and intellectual property – Seed Project 2015» and its results for Ukraine

P. 105

The article analyzes the results of participation of Ukrainian delegations in the International educational program «Idea, utility invention, innovation and intellectual property – Seed Project 2015», which was held in October 2015 in Seoul (South Korea) under the aegis of WIPO, the World Women Inventors and Entrepreneurs Association, WWIEA and the Korean International Cooperation Agency, KOICA. It is emphasized that the goal of the Seed Project is an opportunity to deepen knowledge in the process of creativity, invention, innovation, protection of inventions and managing intellectual property rights. The aim of Seed Project is rendering opportunities to deepen knowledge in matters of the creative process, inventive act, innovations, protection of inventions and intellectual property rights management. The role of WIPO in the development of innovations and IP systems in countries with a transitional period is emphasized.

The author analyzes the state policy of the Republic of Korea on the course of development of creativity, inventiveness, creative, especially as a paradigm in Korea is identified the transition to Economies of creativity. It is emphasized the economic, social and scientific achievements of political model of Korea, which through economic activity relies on scientific knowledge, creativity and taking initiative, resulting in created new driving forces of success, a new market and new jobs. Specific steps that are being realized both at government programs and at the level of companies are analyzed. The activities of governmental institutions in sphere innovative development of Korea are investigated. The

WWIEA experience in the part of leading the policy development of women’s resources on the basis of creativeness is described. The article emphasizes the importance of teaching methods used in the system of national policy. There were given the examples of teaching the creative thinking in Korea and methods of teaching, techniques of thinking, programs of development creativity and teaching STEAM, development of action plans, practice solving creative problem etc. The qualities that have to be in people from developed countries in the future, among which distinguish the ability to solve problems through creative approach, critical thinking, ability to process the information, the ability to communicate are singled out. The conclusions about the prospects of introducing the Korean experience in Ukraine are being made.

Key words: utility invention, innovation, intellectual property, Seed Project 2015, Republic of Korea, Ukraine

Kashkanova N. Legal Aspects of determination of the criteria for the classification of the biomedical researches

P. 114

The article concerns the legal aspects of determination of the legal classification of the medical and biological researches. In particular, the author analyzes the existing evidence-based approaches of scientists who examined all relevant aspects of the medical-biological experiments on human beings and other medical research. Separately, the author determines the nature of the various criteria of classification of biomedical research.

The scientific validity of knowledge about the variety of medical-biological experiment on the human beings proves the complexity and the multi-nature and essence of the modern law doctrine and the practice legal phenomenon. However, analyzing the types of the medical-biological experiment is a complex scientific process that involves finding and isolating certain

phenomenon specific to the legal classification criteria according to which it is necessary to analyze the kinds of medical-biological experiment on the humans. This separation provides varieties of the phenomenon specifying characteristics (information) about its content and the essence.

Implementation of the general classification to the essential functionality of biomedical researches presumes the implementation of different objects, phenomenon or even the process for the certain common characteristics.

The role of the classification has an influence to the feasibility of research on the basis of the unity of the object of such research and to determination of their essential patterns and other characteristics. It is particularly significant for the scientific validity to determine further trends of the researches design. The nature of the functional classification is relevant for the design of the medical – biological experiments.

The ambiguity and the multidimensional of biomedical researches is not framed only by the universal classification criteria. That is because its applying is not able to the fully reflect the objective characteristics of the essential features and the display of the biomedical researches on the human beings. So it seems possible to describe different classification criteria separately. However, the achievement of the specification is only possible basing on the scientific approaches of our colleagues who examined all relevant aspects of the biomedical researches on the human beings and other relevant medical researches.

The author concludes that the resulting scientific knowledge about the variety of biomedical researches on human beings prove the complexity, multi-nature and essence of the modern science into the law and the practice legal phenomenon. This determination provides varieties of the phenomenon specifying

characteristics about its content and essence (design of the research).

Proper exercising and organizing of biomedical researches guarantee the relevant quality and new knowledge that will lead to their further implementation in the medical practice and the safe and effective impact on the human body for it’s proper preservation, restoration and recovery.

Keywords: medical-biomedical research, medical and biological types of the experiments, clinical trials, pharmaceuticals researches, classification criteria, the domestic legal doctrine of biomedical researches

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Myronenko N. Management in the field of intellectual property.

P. 5

The author touches upon the problems of improving of state management in the field of intellectual property and its relationship with the management in scientific, technical activities, innovative development

Key-words: IP management, science, innovation, state management

Savych S. The system of law protection of geographical indications: the experience of Ukraine and approaches of the European Union.

P. 12

A geographical indication relates to commercial signs that

called to identify goods and services on the market. Unlike a trademark, it bears no information about the producer, but about the place where goods had been produced.

The main focus in the field of protection of geographical indications in EU is to create supernational regime, based on the relevant terms of the EC Treaty (particularly in terms of maintaining the common agricultural policy – Art. 37) and is developed in the provisions of the acts of secondary EU law. Thus, the Regulation № 510/2006 provides for supra-national level of protection of geographical indications of agricultural products and foodstuffs, Regulation № 479/2008 – Geographical indications of wines, Regulation № 1576/89 – geographical indications of spirits.

Existing national legal regime for the protection of geographical indications in Ukraine can not be considered effective. Today in Ukraine there is no a single indication that could be get protection in EU in future.

Analysis of national geographical indications protection regime in Ukraine shows the segment of public law dominance, which, in our opinion, is unjustified. Among the reasons for lack of effectiveness of the legal protection of geographical indications in Ukraine we can indicate lack of initiative on the part of producers, excessive dominance of public law segment in the protection of this type of commercial designations, lack of effective control over the using of geographical indications by producers.

We consider that the most optimal regime of protection of geographical indications at the national level in Ukraine can be the one which takes place in the Polish legislation. This will give a number of positive aspects in the protection of geographical indications in Ukraine since greatly simplify the procedure for obtaining legal protection of a geographical indication for producers who want to produce goods in the relevant territory and make effective control over the

observance of special characteristics, qualities, reputation or other characteristics of products marked by geographical indication.

Keywords: EU law, geographical indications, geographical indications of agricultural products and foodstuffs, registration, control

Romashko A., Litvin A., Kravets V. The use of free database for self-searching trademarks.

P. 21

The provided data is available on the website of State Department «Ukranian Institute of Intellectual Property» as follows: «Trademarks for goods and services that are registered in Ukraine»; «Data on well-known trademarks in Ukraine»; «The e-version of the accumulation of the Official Bulletin «Industrial Property»; «Applications for trademarks related to goods and services are accepted for consideration». «Appropriate self-research have been determined. This applies to both, pre-application and during the monitoring of the situation when a trademark has been registered already. The possibility of a rapid and quality research using all these databases has been proven. The practicability of using International Classification of the Figurative bits and pieces of Marks (Vienna Classification) during research. In the example provided, a decrease in processed volumes of information can be seen for use in the research of additional search fields (in particular the codes of the Vienna Classification). Proven that it is practical to use the data available on the website of the World Intellectual Property Organization, such as the «ROMARIN» and «Global Database of brands.» Recommendations are made for doing a proper trademark research upon registering a trademark in Ukraine or on an already registered trademark (to future monitoring) is as follows: define codes in the Nice Agreement Concerning the International Classification of Goods and Services for the

Registration of Trademarks (Nice Classification); define codes of figurative elements of the trademark, which is searched under the International Classification of the Figurative Elements of Trademarks (Vienna classification); search the database on the website of the Ukrainian Institute of Industrial Property («E-version of accumulation of the Official Bulletin» Industrial Property» «About licensing of Ukraine on trademarks for goods and services» with the codes of the Vienna Classification, «The e-version of accumulation of the Official Bulletin «Industrial Property»; For detailed information on well-known trademarks in Ukraine on codes of the Nice and Vienna Classification «registered in Ukraine for goods and services» for individual ballots to the closure of a 10-year cycle on the codes of the Nice Classification, «Applications for trademarks for goods and services are accepted for consideration»); search the database located on the website of the World Intellectual Property Organization (database «ROMARIN» and in the «Global database of brands»; search the databases of patent offices of individual countries in which it is planned to register or have already registered a trademark.

Keywords: trademark, trademark for goods and services, research, similarly, identity

Ulitina O. Copyright on the photographic works in Ukraine.

P. 28

This article analyzes the main accesses to the understanding of photographic work, identifies the main problems faced by the authors of the photos during the copyright protection of the photo. Special attention is given to such concept as a digital photo, and the problems of regulating matters related to it on normative level.

Key words: photography, copyright, digital photo

Kultenko O. To resolve the settlement issues of legal

certainty Internet service providers.

P. 33

This article discusses the problem of application of law in disputes about intellectual property infringement committed with the use of the Internet. The analyzed the decisions the courts France in cases considered copyright infringement against the company Google. The installed characteristic features of the interpretation of the law in these cases. Found the need for approval doctrine «directed activity» related to copyright the using Internet systems. It is proposed to resolve the conflict of law selecting the most closely associated rules to determine the consequences of copyright infringement and non-contractual obligations for the parties to the conflict.

Keywords: intellectual property, jurisdiction, conflict of laws, the claim, court, the system Internet, Google

Kachurovski v. Value of moral (non-property) rights of intellectual property.

P. 46

The article defines the role of the moral rights of intellectual property in the creative activity of the author, and in the process of legal regulation of relations in the sphere of intellectual property. The evolution of views on the moral rights of intellectual property.The influence of the moral rights of intellectual property for the social and legal status of the author.

Keywords: moral rights, copyright, identity, security, communication with the product

Patsuriia N., Reznikova V. Insurance activity as economic and legal phenomenon

P. 59

The article deals with the current issues of economic and legal phenomenon of insurance activity as an objective attribute of the market economy. The place and the types of insurance activity of the system of modern economic relations have been highlighted. The features and the legal basis for implementation of insurance activity have been researched.

Keywords: insurance, insurance activity, types of insurance, forms of implementation of insurance activity

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№ 4 (84), 2015

This scientific article is devoted to study of legal status of state and local authorities as members of civil procedure in cases arising from the disputed copyright relations. The article also examines the grounds for claims of these authorities to court for protection of rights, freedoms and interests of other persons. Special attention is given to clarification in civil procedure of the legal status of the State Intellectual Property Service of Ukraine, which belongs directly to the central state executive authorities, as well as of «Ukrainian Agency for Copyright and Related Rights» as subjects of protection of rights, freedoms and interests of other persons. On the basis of existing legislation analysis, jurisprudence and doctrinal approaches, it was concluded that the «Ukrainian Agency for Copyright and Related Rights» has a representative plaintiff procedural status, thus it can not be attributed to government agencies seeking to court statements of protection of rights, freedoms and interests of other

persons, if there are valid reasons which prevent self-treatment of these persons to court to protect their rights, freedoms and interests. However, «Ukrainian Agency for Copyright and Related Rights» refers to legal entities that in cases established by law may apply to the court for protection of rights, freedoms and interests of others.

Key words: civil procedure; copyright disputed relationships; public authorities; local governments; protection of rights, freedoms and interests of others.

Matskevych O. Features of copyright protection in digital media environment.

P. 15-25

This paper aims to provide a study of the specifics of copyright protection in digital media environment. The aim is achieved by the analysis of theoretical developments and judicial practice.

The author investigates the means of defense of civil rights. The peculiar attention is driven to self-protection of copyrights and related rights which is the fastest mean for author to protect their rights in digital environment for now. It’s also shown that some means of civil rights protection may be used within a self-protection too. These means can be: the prohibition of the dissemination of information, restoration of the situation that existed before the infringement, termination actions violating the right, etc.

Such way of defense as refutation of misinformation in digital media is considered more particularly. It’s proposed to use following procedure of refutation in Internet mass media: the correction of mistake in original material; indication in the same place that there was a mistake, and posting of a separate, new message about the elimination of violation.

As the result of analysis of courts cases and features of

electronic mail correspondence it was proved that it may be a due evidence in civil cases. So the author proposed changes to Civil Procedural Code of Ukraine and the Law «On Copyright and Related Rights» to set out this kind of evidences.

Notary certification as an evidence at a trial is also investigated. The author makes the conclusion that it's possible to use it with simultaneous video recording of actions of notary public.

Some scholars consider technical means of protection to be self-protection means. At the same time it is proven they are the means of self-guarding.

Key words: self-guarding, self-protection, digital environment, digital media, evidences, technical means of protection

Zerov K. Hyperlink in the system of regulation and copyright protection to works placed on the Internet.

P. 26-35

The article gives a description of hyperlinks in the system of regulation and copyright protection to works placed on the Internet.

The key issues of the article are: understanding and legal nature of hyperlinks; classification of hyperlinks; comparison of hyperlinks with copyright objects and domain names; the possibility of recognition hyperlinks as a use of the work.

The author focuses on the fact that there is no legal definition of hyperlink.

The author reveals that hyperlinks have some specific features: they do not create new work and refer to something that already exists. Hyperlink is not the object of copyright protection, although it may contain the work or part of the work. It consists of mandatory and optional elements.

Placing hyperlinks to works that are on the Internet is not using of the works and does not require a right holder's permission. However, such authorization is required for works that are placed in limited access on the Internet.

The author offers to understand hyperlink as a set of instructions that redirect to another element on the Internet in the case of activation.

Keywords: hyperlink, Internet, web-site, use of the work, communication to the public

Trotska V., Petrenko S. Temporary reproduction of works on the Internet: legal aspects and judicial practice.

P. 36-44

The article contemplates the problematic aspects of temporary reproduction of works on the Internet regarding free use of this copyright objects.

The author notes that the use of works in digital form has its own features compared to analogue form. These features caused by technological processes associated with the creation of temporary copies in transactions processing and transmission of information by computer. On the basis of these features in the legislation in the field of copyright and related rights has great practical importance. Thus, reproduction of works on the Internet may be temporary. In this case, the reproduction of works by any person does not need permission from its authors. This reproduction is free. The free use of works gives an opportunity to balance the rights for authors and societies for the free access to the information, knowledge and cultural heritage.

The author analyzes the international legislation on this issues. The article contemplates norms of European legislation such as: article 5 (1) Directive 2001/29/EC of the European Parliament and of the Council on the harmonisation of certain

aspects of copyright and related rights in the information society. The author analyzes the conditions under which the reproduction is temporary. The article contemplates the research of foreign authors concerning the conditions of the free temporary reproduction of works.

Copyright laws in many countries of the world are identified norms which provide for the use of works without author's permission and without paying a compensations to them in case of temporary reproduction of works. The author analyzes the relevant norms of the laws in certain foreign countries.

However, the article contemplates the foreign judicial practice on these issues. The author analyzes the applicable norms of the Law of Ukraine «On Copyright and Related Rights». Author alerts attention of the lack of norms on free temporary reproduction of this Law. Complimented by this the author proposes to amend this Law. Based on the analysis proposals and conclusions were submitted.

Key words: reproduction, Internet temporary reproduction, temporary copies, process, free use of works

Davydova N. Issues of patent law in higher education sphere (experience of the USA and Ukraine).

P. 45-53

Patent law and copyright are critical to higher education's research mission. Both Ukraine and the USA have constitutional provisions about intellectual property. Article I, section 8, clause 8 of the Constitution of the United States authorizes Congress "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries". The current legislation of Ukraine and the USA about patent law in higher education sphere is analyzed. Patent law in Ukraine and the US has many similar features because it is based on international intellectual property treaties such as

1883 Paris Convention for the Protection of Industrial Property and 1970 Patent Cooperation Treaty.Research universities rely on patent law to obtain ownership to patentable inventions made by their faculty and to license their patents to companies positioned to turn patented discoveries into profitable commercial application.

Since the first Patent Act in 1790, patent law has operated on the premises that rights to an invention belong to the inventor. Legal regulation of the work-for-hire employees is a dominant issue in higher education sphere because faculty, research staffs, and general employees usually make new inventions working on or arising from programs supported in whole or in part by funds, space, personnel, or facilities paid for and provided by theUniversity. Most American institutions of higher education have required faculty and other employees to assign or to agree to assign their rights to any patentable invention that results from employer-sponsored research activities made within the course and scope of their employment – to the employer. The list of people who are covered by work-for-hire law should include all types of trainees or postgraduate fellows.

Organizations and universities use invention assignment clauses in employment contracts and patent policies to clarify the legal ambiguity that might otherwise result from the employee inventing something using company/university resources. Such agreements are usually intended to accomplish the legitimate purpose of prohibiting an employee from using for his or her own benefit, or for the benefit of a subsequent employer, any inventions resulting from the resources provided by or work performed for a previous employer. In order to avoid possible conflict of interests and court trials it is prudent to utilize the American practice of resolving issues about work-for-hire inventions. The problems of Ukrainian legal regulation of work on hire are exposed. It is suggested that the present tense wording “do hereby assign any future

inventions to university" rather than a "promise to assign inventions to university" is necessary to prevent faculty from wittingly or unwittingly assigning away rights to university-owned intellectual property.

The institution of higher education has a specific legal status that grants some privileges, for example the possibility to use, in certain cases, patented inventions without the consent from the patent holder. The suggestion to change the article 31 of the law of Ukraine "On the Protection of Rights to Inventions and Utility Models" is made: it is not an infringement of a patent holder right to use the patented invention (utility model) <…> with scientific purpose or in an experiment without commercial purpose or gain".

Key-words: patent, institution of higher education, work made for hire, employee patent agreement

Androschuk H., Davymuka S. Art market and resale right in the eu and ukraine: economic and legal analysis.

P. 54-63

Gives economic and legal analysis and projections for the development of Ukrainian and world art-market. The art market is a system of cultural and economic relations that define: the scope of supply and demand for works of art, the monetary value of works of art, and infrastructure and specific services for servicing this market. Particular attention is paid to the establishment and development of economic and legal institution of the route, the analysis of the EU art market compared to the major markets of other countries. The main positive and negative aspects caused by the adoption of Directive 2001/84/EC «on the resale right for the benefit of the authors of original works of art» (Resale Rights Directive). The conclusion of the need of sustainable art market of Ukraine by the Member States for the purchase and sale of works of art, harmonization of national provisions of

law following the provisions of the Directive 2001/84/ЄС on the basis of existing problems and above experience in its implementation mechanism

Keywords: art-market, royalties, sales, resale right, works of art

Patsuriia N., Reznikova V. Essence of insurance activity: economic and legal analysis.

P. 64-71

The articlei concerns current issues of economic and legal essence of the insurance activity as a system of insurance category relations in the sphere of management. Location and types of insurance activity in the system of modern economic relations. Abstract signs and the legal framework of the insurance business.

Keywords: insurance, insurance activity, types of insurance, forms of implementation of insurance activity

Andreyev D. Features of intellectual communication power and society in conditions of global informatization.

P. 72-79

The rise, formation and evolution of informational relations in contemporary political and legal discourse have important place in the process of social development. The concept of «information», «intelligent communication», «mass media» and «information space» became widespread in the scientific literature and in modern everyday life.

Today it is almost impossible to imagine any sphere of being that would

not was in the area of information relations the effectiveness of which would not be provided by media. Communication relationships between the authorities and society through the

media mutually determine each other.

It also means that the concept of intellectual communication is a crucial factor for the definition of the information society. In other words, the mass communication theory should be based on two aspects: 1) one aimed at the concept of the public system; 2) other one aimed at the concept of communication.

However, the current stage of development of human civilization is accompanied by a factor of hyperdevelopment of the media, which in the process of convergence loses gradually established worldview and methodological traditions and turns into innovative means of constructing an information space. Actually, the mass media are also constructor of new models of communication's steps to form the foundation of mutual responsibility of the state, society and the individual.

We should agree that models of the communication interaction may be different in form. Communication are interpersonal that are implemented using individual tool (or channel) of the delivery of information and also operates using a particular means of communication – the mass media system, that is, to be the mass communication. Here we can assume that today the concept of «communication» has metamorphosed with structural changes. It cannot only be reduced to the concept of communicative action and try to establish a dominant participation of the only institution in it, like the effect of the media influence through the mass media. Communication, above all, is an intellectual interaction aimed at the dissemination of certain knowledge. In other words, mass communication performs not only a technical function; it is in conjunction with other factors acts as the object of intellectual communication system. We note that in an authoritarian and limited from the point of view of democratic' factors societies the function of the implementation of the communication connection is performed mostly unilaterally by the authorities with the help of

controlled communication channels.

Keywords: information, dialogue between the authorities and society, intellectual communication, mass media, information space, information society, global informatization.

Kashkanova N. Legal regulation of clinical trials of medicines and their role in biomedical research of individuals.

P. 80-88

The concerns the ethical and legal aspects of clinical trials as a kind of biomedical researches, which are essential for obtaining and selection of new safer and more effective drugs. Recently, the role of clinical trials has increased in connection with the introduction of practical public health principles of evidence-based medicine.

Under the Ukrainian legislation a clinical trial of medicines – is the research scientific work, which aims to research involving human subjects research intended to discover or verify the clinical, pharmacological and / or other pharmacodynamic effects of one or more investigational medicinal products and / or identify any adverse reactions to one or more investigational medicinal products and / or to study absorption, distribution, metabolism and excretion of one or more drugs to confirm its (their) safety and / or efficacy.

The practice of conducting clinical trials in Ukraine is significant. From 1996 to the present time in Ukraine applicants clinical trials received 4019 positive conclusion on the possibility of clinical trials as domestic manufacturers, foreign manufacturers in international multicenter clinical trials.

During the 1st half of 2014 in Ukraine there is a positive dynamics of the number of the findings of the Centre for clinical trials: 155 conclusions, including international

multicenter clinical trials – 108 findings (in the first half of 2013: 123 including international multicenter clinical trials – 93 conclusions).

Under the legislation studied the protection provided by assessing the risk / benefit ratio as prior to each clinical trial, including on the basis of previous studies, and during its implementation through oversight by the State Expert Center of Ministry of Health of Ukraine (hereinafter – Center) and ethics Committees with appropriate health institution.

In Ukraine, the implementation of international principles of clinical trials began with the adoption of the Law of Ukraine «On Medicines», Art. 7 and Art. 8 is devoted to the examination of the clinical trials, their conduct and protect the patients (volunteers) and above Ministry of Health of Ukraine Order № 690 On approval of clinical trials and expertise of clinical trials and Model Regulations of the Ethics Committee. Therefore, clinical trials are allocated in Ukraine as a separate type of biomedical research.

Ukraine's participation in the conduct of multi-center clinical trials carried out simultaneously in many countries, is important for patients and doctors in general. For patients – is an opportunity to get free treatment with new drugs to physicians – a familiarity with new technologies treatment for the country – the possibility of further registration of drugs with proven efficacy and safety.

The other ethical and legal problems in clinical trials of medicines are placebos. Placebo – a pharmaceutical product containing no active principle. For comparative studies with placebo in shape, color, taste, smell, method of appointment and so on completely mimics the study drug.

Data obtained in the placebo group, a «background», which is due to the natural flow of events during a clinical trial, without the use of study therapy. Assessment of the results

obtained in the active treatment group is against this background. The study, which compared the effect of each other active treatment and placebo is a «placebo-controlled study.» His role in the accuracy of information overestimated, and the difficulties at the same time as the ethical and legal regulation.

Summarizing the above, the author holds positions need to develop the Law of Ukraine «On biomedical research involving human subjects» which would also regulate the procedure for clinical trials of medicines.

Key words: human rights, biomedical researches, clinical trials, medicines, placebo, informed consent

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№ 3 (83), 2015

Kashyntseva O. National Patent Reform in the sphere of Health Care on the principle of Rule of Human Rights.

P. 6–15

The article concerns the legal issues of the patent reform in the sphere of health care on the point of the Rule of Human Rights. Among the economic factors of necessity of realization of patent reform obvious is a necessity of reduction of loading on the budget of the state to insure the proper volume of providing of population necessary medications. Reduction of cost of medications at the national market could be due to expansion of competition with generic drugs. One of methods to ensure the competition of brand drugs with the generic medicinal facilities is to provide the proper balanced public policy as for the granting procedure of patent, as well as to the protection procedure of patents.

The patent legislation of Ukraine contains the row of anomalies that conflict with one of basic principles of Intellectual Property Law – principle of humanity. In intellectual property law, we referred to the possibility of positive law be consistent on natural law, to be focused on human rights law to be humanized.

Summarizing mentioned above the patent reform in health care should consist of the following:

1. Exclude the medicines among the patentable objects of the utility models.

2. Exclude the methods of diagnosis and treatment among the patentable objects of inventions.

3. Exclude patent link from the legislation of medicines.

4. Cancel the safety link in patent law.

5. Implement flexible rules of the TRIPS Agreement into the Ukrainian legislation.

7. Draft the Resolution of the Cabinet of Ministers of Ukraine On approval of the Cabinet of Ministers of Ukraine permission to use the patented invention relating to a medicines in accordance with the requirements of national and international legislation.

Keywords: patent reform, health care, human rights, data exclusivity, compulsory licensing, medicines

Petrenko I. Features of use of literary works in the public domain, international experience and national practice.

P. 13–20

The author examines the issues related to the use of works that have fallen into the public domain, literary and intellectual elements in particular. The comparative analysis

of the legislation of Ukraine with similar provisions in foreign legislation is made.

In terms of national legislation of Ukraine that regulates intellectual ownership of copyright, the public domain notion has narrow meaning, because determines that the public domain is works and objects of related rights, copyrights and (or) related rights to which are ended. However, the relevant provisions of the Civil Code of Ukraine do not contain the term public domain; although in fact convey their meaning. Thus, in accordance with Article 447 of CCU after expiry date of intellectual property rights to a work, it can be freely used by any person, if other not established by law. Minimum term of copyright for the countries that joined the Berne Convention and the TRIPS Agreement is the whole life of the author and 50 years after his death. In addition, the Convention provides the possibility of establishing greater validity in the national legislation of member countries. In the European Union, the term of copyright protection has been increased to 70 years.

It should be noted that the use of works that went into public domain are limited by the observance of moral rights of authors of these works. According to Article 438 of CCU and Article 14 of the Law the author posses the following moral rights: the right of authorship, the right to choose a nickname; the right to anonymity; the right to inviolability of the work including the right to object to any distortion, mutilation or other modification of the work which could harm the honor and reputation of the author’s work. The above-mentioned rights are permanent in Ukraine. There are also obstacles for legal use of works that have fallen in the public domain. In some cases, the right to use literary works that belong to the public domain may be prevented by hardware. Typically, the application of the latter makes a distinction protected and works that have fallen in the public domain. These tools implants into a work under the protection and in

the one that is the product of public domain.

Keywords: copyright, public domain, literary works

Kovalenko T. Management of copyright and related rights.

P. 21–27

In Ukraine, copyright and related rights protected under the Law of Ukraine «On Copyright and Related Rights», which in particular protects the «moral rights and property rights of authors and their successors related to the creation and use of science, literature and art – Copyright law and the rights of performers, producers of phonograms and videograms and broadcasting organizations – related rights». The authors of the works of science, literature, art, performers, producers of phonograms, broadcasting organizations have the right to form organizations that administer economic rights of authors and other copyright and related rights on a collective basis. These organizations are called organizations for collective management of proprietary rights, and they are investigated in the article.

Keywords: copyright, collective management organizations

Zaitseva A. Problems of determination of the jurisdiction of the courts.

P. 28–35

The article reviewed the basic problems of determination of the jurisdiction of the courts over cases regarding protection of intellectual property rights to marks for goods and services. The author of the article proposed criteria for the separation of the jurisdiction in this field. In the article special attention is paid to the jurisdictional problems in cases of invalidation of certificates for marks for goods and services, cases of refusal to grant legal protection to these objects and judicial appeals against decisions of the

Antimonopoly Committee of Ukraine. The author analyzed the regulations, doctrinal sources, court practice and made some suggestions for improving the current legislation. The article criticizes the approach of determining the jurisdiction taking into account only the fact of presence of public authority in legal relationship, ignoring the issue of legal nature of that relationship and execution of commanding administrative functions by public authority. Sometimes even cases of invalidation of certificates for marks for goods and services mistakenly are attributed to the jurisdiction of administrative courts. It is necessary to introduce a uniform approach of determining the jurisdiction in the field of protection of intellectual property rights, including the protection of marks for goods and services. Cases in which public authority exercises commanding administrative functions in relation to the plaintiff just in the relationship that is in dispute must be attributed to administrative jurisdiction. In the majority of categories of cases in the field of protection of rights on trademarks relationship is of private nature and these cases, depending on subject matter might be attributed to the jurisdiction of commercial courts or general courts in civil proceedings. It is important to note that in cases of invalidation of certificates for marks for goods and services the certificate itself is to be found invalid, but not a decision based on which it is issued. Disputes over decisions of the Antimonopoly Committee of Ukraine are to be referred to the jurisdiction of commercial courts on the basis of a direct requirement of law. In the course of the studies, it is proposed to define the term “public law dispute” in the Code of administrative legal proceedings of Ukraine for a clear delimitation of jurisdiction of administrative courts. The Article 12 of the Code of civil procedure of Ukraine, which contains an exhaustive list of categories of cases under the jurisdiction of commercial courts, needs to be amended. It would be appropriate to include cases of the protection of intellectual property rights.

Keywords: intellectual property, legal protection, jurisdiction, trademarks, marks for goods and services

Petrenko S. The scope of the specific tasks during the forensic examination for compliance of an invention (utility model) with novelty patentability conditions.

P. 36–45

The article considers the relationship between the scope of a particular expert problem which is being solved during the forensic examination in cases about the compliance of an invention (utility model) with the novelty patentability condition, and the formulating (editing) of the question that is put to the expert.

According to section 4.1.1 of Procedure of forensics expertise related with inventions and utility models, at one stage of research an expert in cases of cancellation of a patent on an invention (utility model) because of its bar to novelty patentability condition, essential features of the invention (utility model) to the date of filing of the application for such intellectual property objects, and if priority is claimed, by the priority date, is being checked.

If the unfamiliarity of characteristics of independent claim of an invention (utility model) in the art is determined, the examination of features of the dependent test item is not conducted. Thereby, sometimes for decision of legal expertise the question is put which limits the expert only with a research of features of independent claim of an invention (utility model). The results of this study will not affect the final conclusions of the forensic examination. However, the doctrine of patent law know that the scope of protection defined by all claims of an invention (utility model), taking into account the totality of attributes that belong to it. Therefore, such a restriction is unacceptable in order to complete the expert studies and objectivity of their results.

An expert’s research of totality of essential features of an invention (utility model) contained in independent and dependent claims, in terms of information on prior art to the date of filing of the application and, if priority is claimed, by the priority date, also makes sense in the course of judicial examination in cases where the subject of call demands its recognition of patent as invalid in part because of its bar to novelty patentability conditions under Part. 1 Art. 33 of the Law of Ukraine «On Protection of Rights to Inventions and Utility Models». Thus, the forensic study can establish that from the art a set of features of independent claim of an invention (utility model) is known, and a set of attributes of independent and one of dependent claims of an invention (utility model) at a constant technical result is not known. In such circumstances, the court may found the patent as partially invalid in the sense of reducing the amount of patent rights. Thus, if the subject of call requirements concerning the recognition of patent for an invention (utility model) invalid due to a bar to novelty patentability conditions or partial recognition of a patent as invalid with the corresponding adjustment independent claim, then to the solution of expertise it is necessary to raise the question as follows: «Does granted for research papers (case file № 000) information, according to which a set of features of the claims under the patent № 000 became generally available (known) in the world of art to the date of application № 0000, and if priority is claimed, by the date priority»?

Keywords: forensics, utility model, criteria for patentability, novelty

Koval I. Legislative regulation of contractual relations in the field of intellectual property: the state and prospects of development.

P. 46–54

The norms of current legislation of Ukraine, regulative contractual relations in the field of intellectual property, are analyzed in the article. The features of the legislative regulation of contractual relations are educed in a copyright and industrial property rights. Problems and prospects of improvement of the legislation are certain about the agreements related to transfer of intellectual property rights. To general directions of development of this legislation the legislative providing of functional specialization of norms is attributed about agreements in the field of intellectual property, and also normative regulation of legal forms of involving of intellectual property rights in innovative activity.

Keywords: contractual relations, intellectual property

Androschuk G., Davymuka S. Art market and resale right in the eu and ukraine: economic and legal analysis.

P. 55–65

Gives economic and legal analysis and projections for the development of Ukrainian and world art-market. The art market is a system of cultural and economic relations that define: the scope of supply and demand for works of art, the monetary value of works of art, and infrastructure and specific services for servicing this market. Particular attention is paid to the establishment and development of economic and legal institution of the route, the analysis of the EU art market compared to the major markets of other countries. The main positive and negative aspects caused by the adoption of Directive 2001/84/EC «on the resale right for the benefit of the authors of original works of art» (Resale Rights Directive). The conclusion of the need of sustainable art market of Ukraine by the Member States for the purchase and sale of works of art, harmonization of national provisions of law following the provisions of the Directive 2001/84/ЄС on the basis of existing problems and above experience in its

implementation mechanism

Keywords: art-market, royalties, sales, resale right, works of art

Kharchenko V. Counteraction intellectual piracy is in Ukraine: providing of guard of intellectual ownership rights or affecting method public policy and mechanism of unfair competition.

P. 66–77

In the article the questions of becoming and development of institute of guard of rights are examined on the results of creative activity and mean of individualization in Ukraine from the moment of finding of independence and to the present tense. Specified on social, political and other factors which stipulated the high enough indexes of intellectual piracy in sew on to the country to the not border of XX–XXI centuries. The tasks of non-state associations of companies-producers of business and entertaining software are analysed, films, telecasts, music, books and magazines, and also mechanism of their influence on the public policy of governments of the most developed countries of the world. The mechanism of influence of International alliance of intellectual property is specified (International Intellectual Property Alliance (IIPA) on the foreign policy of the USA and subsequent economic approvals, which are used the indicated country to the states, to gettings status of «Priority Foreign Country».

Grounds and occasions of application in regard to Ukraine of different sort of limitations are analysed in foreign economic activity, rights related to violation on the objects of intellectual property, and also including of Ukraine in «Special 301» List. The gnosiological aspects of distribution are analysed in Ukraine of intellectual piracy, public policy of counteraction the indicated encroachments, and also directions and concrete steps of construction are determined

in sew on to the country of innovative so-ciety.

Examining a level and system of preparation in Ukraine of specialists in IT-sphere, the high level of domestic programmers, and also their competitiveness, is established at the market of the computer programming and creation of software products both in the countries of Western Europe and in the USA. Efforts are analysed on forming in sew on to the country of favourable terms of development of industry of programmatic products, creations of highly productive workplaces, bringing in of investments, increase of volumes of output of hi-tech products, stimulation of science linkage export and substituting for the import of software products, realization of scientifically-technical potential of Ukraine.

Grounded, that realization of various influence on IT-сфepy in Ukraine outside both governments of the separate states and ungovernmental associations of companies-producers of intellectual content, not contingently the level of violation of rights on the objects of intellectual property in our to the country, but depends on a concrete political situation and external influence has for an object on the public policy of Ukraine. At the same time such actions violate and rights of defence from an unfair competition, substantially complicate (up to elimination) the production of business and entertaining software in Ukraine, and also conditioning exploitation of domestic specialists exceptionally in the direction of the off-shore programming (IT-outsourcing).

Keywords: determinants of crimes in the field of intellectual property, International Intellectual Property Alliance (IIPA), «Special 301» List, IT-outsourcing

Karpenko S. Refunds on deposits of physical persons of banks in the process of liquidation: financial and legal aspects.

P. 78–86

The problem of the return of funds on deposits of individuals

placed in bank institutions that are under liquidation. Analysis of judicial practice shows the unequal application by courts of the relevant legislative provisions governing the legal nature of deposit accounts and fulfillment of agreements on the return of deposits. Analyzes the position of civil science and civil law on the regulation of the deposit agreement, the execution of monetary obligations. Investing natural and legal persons in bank deposits is the passive banking operation and is characterized by increased banking risks. Also analyzed approaches financial and legal science and banking legislation in the definition of the rights and obligations of banks arising from the provision of banking services to service deposit agreement. The general principles of operation of national insurance of bank deposits. Analyzes the provisions of current legislation in order to identify priority rules enshrined banking legislation, in terms of return guaranteed amounts of deposits of individuals by banks that are under liquidation. It is shown that the relations arising in connection with the existence of the deposit agreement inherent in complex dichotomous nature, based on the application of the provisions of the civil and financial legislation in the process of solving the procedure for the return bank deposit.

Key words: bank deposit, banking, bank liquidation, the Deposit Guarantee, the national deposit insurance system

Kurowski S. On some aspects of the state to guarantee the legal protection of bank relationships.

P. 87

This article analyzes the general approaches to understanding banking relationship as an object of legal protection. The influence of the financial and economic factors to ensure the stability of the banking system. The stability of the banking system and the more – the stability of the national currency standing as the initial objectives of the central bank of the

state. Identify the legal mechanisms that affect the solution of the task of ensuring the stability of the banking system. Among the areas of ensuring the stability of financial resources circulating in the banking sector, substantial given to banking regulation and supervision functionality which is intended also to legal protection of banking relations. Note that in Ukraine the combined form of banking supervision, which involves concentrating the functions of supervision within the central bank, in close cooperation with the internal and external audit. Identify areas of improvement of the National Bank of Ukraine, including in the direction of banking regulation and supervision, auditing, financial monitoring and more. We study the foreign experience of legal protection of banking relations. As one of the causes of the global crisis last called deficiencies in financial regulation and supervision, for Ukraine it is vital to solving systemic problems of improvement of legal regulation of banking relations.

Keywords: banking, banking relationships, the National Bank of Ukraine, legal protection

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№ 2 (82), 2015

Kodynets A. Contractual relations in the transfer of intellectual property rights.

P. 5-13

In modern conditions of development of market relations are increased the value and role of the treaty as a universal model of mediation legal relations based on legal equality, self-determination and independence of their participants. In these circumstances, the value of the contracts are increased and the scope of contracts are expended, new contractual

structures are created, mechanism of regulatory procedures are changed.

Today in the field of intellectual activity there are a large number of different contracts of different nature, a significant portion of which are specific contractual design, unique to this area. Therefore, the scientific analysis of the legal nature and place of contracts on the transfer of intellectual property rights in the civil contractual obligations, the study of their features and aspects of the contractual regulation of relations in the disposal of the rights of intellectual property has the particular importance.

Along with the license agreement, which regulate relationships for the provision of intellectual property rights, there are other contractual models which reflect the process of disposal of the rights of intellectual property. This is a contract on transfer of exclusive intellectual property rights, which received its regulatory consolidation in the art. 1113 of the Civil Code of Ukraine.Under this contract, the person who holds the exclusive intellectual property rights, transfers the rights to another party in whole or in part according to the law on certain contract conditions.

In contrast to the license agreement, agreement on the transfer of intellectual pro-perty rights is aimed at full assignment of property rights to the work of art, invention, utility model, industrial design, trade mark or other intellectual property object, so the content of the contract on the transfer of intellectual property rights implies irreversible alienation the rights of intellectual property.

Form of this contract has complicated character. Agreement on the transfer of intellectual property rights is a mandatory in written form. Agreement on industrial property rights shall be subject to mandatory state registration. In article are made the conclusion that the law should secure the position, according to which if the contract for the transfer on intellectual property rights are subject to state registration, the property rights of intellectual property passes to the purchaser at the moment of state registration of

the contract.
The article considers the civil-legal aspects of the contractual relationship on the transfer of intellectual property rights, the analysis of the current legislation in the area of disposal of the rights of intellectual property, determination of the legal nature of this group agreements, as well as the formulation of conclusions and recommendations aimed at improving the civil legislation in this area.
Key words: contract on transfer of exclusive intellectual property rights; disposal of intellectual property rights; trade mark; information relations, the result of intellectual activity; civil law

Illiashenko E. Principle of direct execution of the copyright agreement in the sphere of health care.
P. 14-23

The article is dedicated to a research of the principle of direct execution of the copyright agreement in the sphere of health care. The demands inherent to the principle of direct execution in the sphere of medicine along with national and international legislation are analyzed in the scientific article. The author has come to conclusion that the main participants of intellectual creative activity are the persons conducting inventive, pedagogical, scientific and technical activity.

The possibility of reproduction of creative result, achieved by the author of piece of art, third persons, is one of the reasons of appearance of copyright legal relations.

The order of entering into the copyright agreement is defined by the Civil Code of Ukraine and the Law of Ukraine “On Copyright and Related Rights”. Contractual form of piece of art`s usage guarantees realization and protection both non-proprietary and proprietary rights of the author. This form satisfies the interests of the clients due to the fact that they are purchasing separate rights to use the piece of art, non-belonging to the other persons, and in connection with

this they are able to cover expenses on reproduction and distribution of piece of art and to receive remuneration. In addition, the society is also interested in contractual usage of piece of art, because such form stimulates creative activity of citizens and promotes spiritual and scientific development in the state.

The Law of Ukraine "On Copyright and Related Rights" defines a copyright agreement as an agreement, in accordance with which one party (the author or other person) shall transfer proprietary rights to the other party to the agreement.

The copyright agreement shall be the agreement, in which the substitution of the author-executor is not allowed under any circumstances.

The main duties of the author comprise a direct execution by the author him/herself and transfer of the piece of art to the other side. The piece of art shall meet the conditions and requirements, defined by the parties – it can be a piece of art of a certain kind of literature, genre, designation, scope etc. The requirements to the scientific work of art – article, brochure, monograph, manual – are defined in the same way.

The author offers to introduce the notion "principle of direct execution" in the copyright agreement, aimed to more thoroughly reflect the author`s duty to create the object of obligation by his/her own creative work. The contents of the copyright agreement shall be built on this principle.

Keywords: agreement, author's contract, health care

Ulitina O. Problems of registration of photographic works in a digital society: Ukraine, the United States and the United Kingdom.

P. 24-30

The article deals with the problem of registration of copyright on photographic works. It contains the analysis of existing schemes, which regulate the registration of copyright on the photographic works in countries such as Ukraine, the United States and the United Kingdom. It is proposed to amend the registration of copyright.

Nowadays registration of the copyright is optional, but some attempts to popularize it are undertacken. However, the current system of copyright presumes that the author does not actually require registration for his rights, although in further it leads to problems with the defense of his work, receiving of compensation for damage caused by violations.

The introduction of compulsory registration of copyright can significantly improve the situation in this sphere, it may lead to more efficient protection of rights in a digital environment.

This paper proposes the introduction of the system of registration requirement for copyright, as this procedure will improve the copyright protection and equalize the balance between the author and the society, as well as will help in dealing with «orphan works».

This system of registration will reduce the number of orphan works, that for which it is impossible to identify the personality of the author.

The most advanced is the system of registration in the United States. It offers online registration option that is much faster and cheaper than the paper registration. Talking about the registration of photographic works, has to be admitted that it is possible to register a group of pictures under the one title which is much more useful for the photographer.

Copyright registration on photographic works in the UK is less developed, but there is also the possibility of on-line registration and registration of collections of photos.

Registration of photographic works in Ukraine is more complicated and does not provide online registration. Therefore, it is proposed to adopt foreign experience and maintain the online registration in our country. Online registration will allow to raise the fees for regular registration. This will make online registration more popular because it is more simple, fast and cheap than paper one.

Keywords: copyright, photographic work, copyright registration, registration of copyright on the photographic work.

Androschuk H., Afyan A. Conflicts between trademarks and geographical indications: resolution mechanisms.

P. 31-40

The article deals with geographical indications as a legal category and an economic and legal institution. The reasons of conflicts between trademarks and geographical indications and mechanisms of their resolving (conflicts trademark law, the law on geographical indications, unfair competition and commerce under a different name). It is considered administrative system of protection, international agreements (Lisbon Treaty, TRIPS Agreement). The regulatory framework applicable in resolving disputes between trademarks and geographical indications in the EU (EU Regulation № 2081/92, TRIPS Agreement), the USA (rules BATF, Lanham Act) and in Ukraine is analyzed. The recommendations on alternative mechanisms for resolving conflicts trademarks and geographical indications are made

Keywords: geographical indication, trademark, conflict, unfair competition, litigation

Petrenko S. Some issues of compliance of an invention to such criterion of patentability as novelty.

P. 42-48

This article concentrates on improving of the methodological

provisions of forensic examination facilities of patent objects in solving the problem of establishing of an invention (utility model) to «novelty» patentability condition and legislation on protection of rights to inventions (utility model).

The procedure for determining of compliance of provided invention with patentability novelty condition set out in the Law of Ukraine «On Protection of inventions (utility model)» and the Rules of the application for invention and applications for utility model. Thus, in contrast to the procedures for determining compliance with the invention provided «novelty» patentability criterion, which was outlined in the Order of the application for an invention (utility model), which operated in decision rules of the application for invention and applications for utility model, the novelty test is performed only with position of detection of the technical solutions with identical features and does not take into account the technical solution with equivalent, or identical and equivalent characteristics.

Utility models, as well as the invention, the novelty test criteria is made only from the standpoint of detection of the art technical solutions with identical characteristics, in the absence of verifying compliance with the requirements of patentability such as «inventive step», a prerequisite for Patents as a utility model technical solutions that all classical principles of patent law can not and should not be patentable.

Methodological Recommendations on specific issues of examination of an application for an invention (utility model), developed in 2014 by the SE «Ukrainian Institute of Industrial Property», provides, in the case of the examination of the patented invention for compliance with the requirements of patentability «novelty» of research known in the art technical solutions which are not unique to identical but equivalent features. For the proper regulation of utility

model examination for compliance with the requirements of patentability («novelty») similar rules should be contained in the Rules consideration.

In carrying out by a court decree forensic research for information on the state of the art set of features useful model to the filing date to it, or, if priority is claimed, before the priority date, according to the methodology for forensic examination related inventions and useful models (universal) of the Ministry of Justice of Ukraine (Reg. № 13.3.01) equivalent research evidence is not made.

The difference in approach to establishing the details of the art set of features useful model for forensic examination and examination of State Enterprise «Ukrainian Institute of Industrial Property» may lead to different conclusions even in the study of the same sources in the same amount. In this case, the above circumstances, expert opinion on the patentability invention, compiled SE «Ukrainian Institute of Industrial Property» at the request in accordance with Part 2 of Art. 33 of the Law of Ukraine «On Protection of inventions (utility model) in our opinion is more correct than the conclusion of forensic examination, as the study takes into account the equivalence of attributes.

This fact should be taken into account when providing evidence of the parties in the process, and judges when deciding on the need for an examination of invalidation of a patent for utility model Ukraine and evaluation of evidence.

Keywords: forensics, utility model, criteria for patentability, novelty

Shtefan A. Mechanism of proof in legal structures of the right to judicial protection.

P. 50-57

The mechanism of judicial evidence relates to the field of procedural and legal mechanism. It’s a certain system of elements, components, which reveal its essence in their

interactions. It doesn’t act always, but only where the implementation of legal norms on certain individuals need to determine their rights and responsibilities in the court decision. The mechanism of procedural regulation ensures the implementation of the right to judicial protection.

Judicial protection is a complex legal phenomenon. This is the activity of the whole judicial system, the set of all court proceedings. The right to judicial protection guaranteed by the Constitution. The rights and freedoms of man and citizen are protected by the court. Denial of the right to appeal to the court for protection is invalid.

The first element of the right to judicial protection is the right to go to court. This is only the initial stage of the right to judicial protection. Connectivity of the right to judicial protection and results of the case is wrong. The second element of the right to judicial protection is not the right to satisfy the claim, but the right to a fair hearing by an independent competent and impartial court. This is the right to trial regardless of the results and consequences of the right to receive reasonable legal; it’s the right to judicial decision regardless of its content and character. The third element of the right to judicial protection is the right of appeal. The last item is the right to execution of court decision. Without it judgment loses its value.

In the context of the right to judicial protection the mechanism of judicial proof plays a leading role. No civil case can be resolved without proof; no right can be protected only by virtue of an appeal to the court for its violation. Mechanism of judicial proof is closely connected to the realization of the right to judicial protection; it valid at all stages of the civil process and directly affects the movement of civil case, at the appeal court in the appeal or cassation, the review of court decisions in due to the new circumstances.

Keywords: court defence, proof, mechanism of proof

Rieznikova V. Concept, importance and perspectives of legal security of e-commerce in Ukraine.

P. 58-72

The article is devoted to the concept, features and value of e-commerce. It was established that the definition of «electronic commerce» understanding of its essence, there are two predominant approaches: (1) as a business (commercial) activity, which is a kind of economic activity; (2) as a special relationship – relationship of electronic commerce. Last treated as a complex phenomenon that requires settlement rules different areas of law (commercial, civil, administrative, etc.). Solved value ecommerce concept with other related concepts (electronic commerce, Internet – commerce, etc.).

Highlight multiple levels of legal regulation of relations of e-commerce international, regional (within the EU) and national. Analyzed the international experience of legal support e-commerce. Both the main international bodies and made them key acts on legal support e-commerce. Defined legal framework regulating relations in the field of e-commerce in Ukraine.

Shows the indicative list of priority measures in the long term is intended to provide the necessary regulation of e-commerce in Ukraine. The necessity to adopt a special legal act (Law of Ukraine «On electronic commerce»), it is dedicated to the regulation of electronic commerce, such that summarize, systematize and identify its main elements. The provisions of this law shall take into account the extensive rules of the Commercial and Civil Codes of Ukraine (while making changes to them), the provisions of the UNCITRAL Model Law «On electronic commerce», as well as the European Union Directive on electronic commerce. Noted the need for the development and improvement of legislation of Ukraine in the field of e-commerce to take into account the principles of technological

neutrality and transparency.

Keywords: e-commerce; concept of e-commerce, value of e-commerce, signs of e-commerce, legal security of e-commerce, regulation of e-commerce

Virchenko V., Savchuk V. Protection of breeding achievements as precondition of food security of Ukraine.

P. 73-82

The article is devoted to analysis of interconnection between food security and breeding activity results protection. The idea of food security as main tasks in the context of economic security support is proved. Connections between food security and the necessity to support agro-industrial complex and direct production of crops, their updating and improvement are discovered. Proved that breeding industry has a low level of development in Ukraine. This situation has arisen because of the limitation of the legal framework and insufficient level of government support.

The article also reveals the basic problems of food issues at the international level and its possible solutions at the national level. There is described the essence of food security, approaches to its understanding, and the mechanism of its formation. There also is revealed that a very important component of food security is its functional subsystem that is engaged in direct production and the formation of food resources and reserves. It is determined that a special place in this process takes the synthesis of agro-production and innovative scientific approach, which is based on the breeding industry.

In this case, the article also examines the nature of breeding and basic ways of its protection. In addition, there are identified the most powerful international organizations which coordinate international cooperation in the field of the breeders' rights legal protection. The article also identifies the main international agreements concerning legal protection of the breeding activity.

Ukrainian legislation in the sphere of breeders rights protection is analysed. It considers institutional and regulatory support of this process in Ukraine. System of civil law, administrative law and criminal law protection of rights of breeders in Ukraine are considered. Main problems of breeding legislation and implementation of these laws in Ukraine are analyzed. Recommendations concerning improving effectiveness of legal protection and government support of breeding activity results in Ukraine are defined.

Keywords: breeding achievements, food security, breed, protection of breeding achievements

Chaban O. Respect of the human right to the medical secret in the relations between a doctor, patient and insurer.

P. 83-88

The article is dedicated to the analysis of how the respect of medical secret influences on the relations between the insurer, insurant and the doctor.

To analyze in due course the above the current legislation of Ukraine regulating the relations between the insurer, insurant and a doctor and the practice of the said relations shall be examined. And as a result the relative amendments to the current Law shall be made.

The issues examining and analyzing in the article are very topical and highly important to be resolved. First of all, the said issues are part of the reform of the health care system of Ukraine, and the reform of the health care system is the part of the Strategy of state development «Ukraine-2020» having the purpose to implement the European standards into all spheres of Ukrainian life.

Nowadays according to the current law in most of cases we have

a possibility to have a health insurance only if we sign a free-will health insurance contract. This type of contracts is regulated by the Law of Ukraine On Insurance, by general principles of Civil Law, by general principles of Medical Law of Ukraine.

Having analyzed the texts of contracts offered by the Insurance companies in Ukraine it is clear that there are some drawbacks that breach the general principles of human rights and some issues that do not meet the general principles of Civil and Contract laws. The mentioned issues can be the reason to bring an action against Insurer who is breaking the rights of Insurant. To resolve the said issues and drawbacks some amendments to the current Law of Ukraine shall be made. For instance, it is offered to amend the art. 20 of the Law of Ukraine «On Insurance» and to prohibit the insurer to examine, analyze and to use by any way the information related to the genetic data of the Insurant, even despite the explicit consent of the Insurant; to amend the Insurance rules of the free will health insurance contracts with the requirements to respect the special status of health information at all stages of the relationship between the insurer and insurant.

Key words. Health insurance, medical secret, persons right to the health data confidentiality, respect, insurance rules, insurer, insurant, free-will health insurance contract.

Kozachenko V. Correlation between court decisions and generalization of judicial practice.

P. 89-94

The author analyses definitions and legal nature of court decisions and generalization of judicial practice. The article explains differences between a court decision and a precedent. The special attention is given to the problem of using court decisions and generalization of judicial practice as sources

of civil law.

Key words: generalization of judicial practice, court decision, precedent, sources of civil law, interrelation, legal nature

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Kashyntseva O. Reconsideration of intellectual property law from the point of human rights: modern challenges – modern replies.

P. 5-10

Since 2015 the Intellectual Property Research Institute of National Academy of Law Sciences of Ukraine starts the research project of reconsideration of the place and the role of intellectual property law in the sphere of protection of Human Rights – «Harmonization of Human Rights and Intellectual Property Rights in the Sphere of Medicine and Pharmacy». Scientific challenges facing scientists of Intellectual Property Research Institute have extremely strong social demand, based on the necessity to guarantee the human rights by the mechanisms of Intellectual Property law.

Actually the urgency of national reforms in the spheres identified in the Strategy for Sustainable Development «Ukraine-2020» among the main priorities of which is the reforming of the healthcare and intellectual property.

Intellectual Property Research Institute is the most potential national research institution that forms national doctrine of intellectual property as an integral part of national sovereignty. Philosophy of Intellectual Property Research

Institute is basing on the principle of harmonization of human rights and intellectual property rights. It is based on the principle of priority of Human Rights in Intellectual Property Law and determining legal mechanisms harmonizing the interests of intellectual property rights and public interest. These researches are providing by the Center for Harmonization of Human Rights and Intellectual Property Rights of Intellectual Property Research Institute of the National Academy of Law Sciences of Ukraine. The fundamental principle of our scientific research with the further implementation of its results into national law is the principle of harmonization of human rights and intellectual property rights. Such scientific research have been carried out by specialists of Intellectual Property Research Institute for many years, through numerous scientific publications and public speaking our specialists substantiated the necessity of reconsideration of the several principles of intellectual property in the twentieth century. Only thanks to them, drawing on the experience of our foreign colleagues we are able to start a new line of scientific research with confidence in its success.

Keywords: human rights, intellectual property, patent, reformation, medicines, methods of treatments

Kodynets A. Conflicts of legislative regulation relations of intellectual property.

P. 11-18

Implementation of innovative model of Ukraine is not possible without the creation a modern system of regulatory relations in the field of protection of intellectual property that would ensure protection of human subjects of creative work (authors, artists, inventors), guaranteeing observance of their rights, protection against possible violations.

The first steps in improving legal mechanism in the use of

results of intellectual and creative activities are laid in adopted in 2003 by the Civil Code of Ukraine, which not only greatly expanded the scope of intellectual property rights, but also significantly enriched its substance. In the Civil Code of Ukraine relations in the field of intellectual property was first fixed in a separate structural part (4 book «Intellectual Property Rights»), which indicates their importance to private law.

Further improvement of regulatory relations in the field of creative works provides detailed provisions of the Civil Code at laws, regulations, creating reliable mechanisms of implementation and protection of their subjects. It is necessary also to bring existing normative material in accordance with the general concepts and approaches identified Civil Code of Ukraine with regard to the Association Agreement concluded between Ukraine and the European Union, Chapter 9 of which (Articles 157–252) contains requirements and standards related intellectual property rights.

Analyzing the changes that have occurred in the field of civil law, which regulates the relations of intellectual property, we can conclude that in fact with 2003, date of adoption of the Civil Code of Ukraine, the domestic legislation on intellectual property has not been changed. Civil Code of Ukraine did not become the impetus that would be able to provide update an appropriate legislative framework, and many of its rules (some of which have truly innovative nature), and have not received their specificity at the level of special laws and regulations.

The article examines the problems and conflicts of the current legislation of Ukraine regulating relations in the field of intellectual activity. Analyzes the provisions of the civil legislation of Ukraine, including special, detailed ways of improvement, describes the steps that are taken in this direction in Ukraine. Article explores legal practice of assessment of disputes concerning breach of intellectual

property rights. In scopes of the subject of the research it is emphasized the relationship of regulatory issues of intellectual property, the contradictions of the provisions of special intellectual property laws and regulations of the Civil Code of Ukraine, and the imbalance of certain provisions of the Civil Code of Ukraine, including book 4 and chapters 75 and 76, dedicated to the treaty obligations in the field of intellectual and creative activity.

Keywords: intellectual activity, information, contractual obligation, intellectual property, object of intellectual property rights, conflict, civil legislation

Shtefan O. Claims about recognition in cases arising from disputed author legal relationships.

P. 19-26

This article is devoted to issues of civil procedural classification of claims. Despite the fact that among civil procedure specialists there were no disputes about isolation of claims for recognition, however, taking into account reforming of the national civil procedural law, there is a need to study this kind of claims separately from example cases arising from the disputed copyright law relations.

Claims for recognition caused by the need of clarity and certainty in the legal relationship of the parties, in establishing of the limits of the disputed right or obligation in order to remove obstacles to their implementation. Establishing of certainty by judgment in copyright relations, in rights and duties of its subjects creates the necessary basis for their voluntary, correct and conscientious performance and serves as a prevention of their offenses.

Judicial records indicate widespread nature of claims for recognition of copyright to works of arts, for annulment of

author’s or publishing contract etc. Due to the fact that the claim for recognition can be sued for the award, in procedural literature, these claims also name as no-award, previous, prejudicial, constituent claims. However, factually there is no judicial practice of «clean» claims for recognition of the rights arising from copyright relations, usually the plaintiff, in order to save time and money drawn simultaneously with the request for recognition of copyright infringement and demanding the award (collection of royalties, compensation, etc.).

Analysis of judicial practice shows that the subject of the claim for recognition mainly serves the legal requirements of the copyright violated or disputed legal rights or obligations between the plaintiff and the defendant. But there are also claims for recognition not prohibited by law, the subject of which are the substantive requirements of the legal relationship between the others, particularly when presented with a claim for recognition of scenario or other contract annulled and void, the recognition of free use of a work without the consent of the author or another person of copyright (Articles 21–25 of the Law of Ukraine «On Copyright and Related Rights»).

In cases arising from the disputed copyright relations, on protection of which a claim for recognition is filed, the essence of the plaintiff’s legal demand to the defendant is entitled in defendant’s agree of the plaintiff’s right in the form as required by the plaintiff to the defendant submitted plaintiff and right did not dispute the existence of such a right.

The basis of the claim for recognition of copyright are legal conditions (legal facts), confirming the presence of legal disputes of the parties, their rights and responsibilities (in the positive claims), or confirming the absence of legal disputes between the parties, their rights and obligations (in the negative claims). The claim for recognition of the reason

are mainly the facts that lead to recognition, modification and termination of copyright relations as well as evidence of crime.

The study that was made allowed to distinguish the following features of the claim for recognition in cases arising from the disputed copyright law relations: 1) their goal is a statement of presence or absence of relations; 2) judgments on them not entail enforcement, although they have forced power – require the parties to certain behavior based on the presence or absence of legal disputes; 3) served as on already disturbed law, and before the breach with a view to prevention

Key words: claims, types of claims, author legal relationship

Trotska V. «Google tax»: distinctions of using journalistic works placed on the Internet.

P. 27-36

The article contemplates the problem aspects of legal regulation relations regarding the reproduction of the exploratory aggregators of journalistic works previously published in the mass media or on the websites of the publishers.

The author explores such terms as: «journalistic works», «news», and points at the difference between these terms. The author notes that one should distinguish between news and journalistic works, which has the news character. An access to information published in the news, should belong to society, i.e. to be free. However, the right of journalistic works (articles, notes, analytical reviews, interviews, commentaries, speeches, reports, etc.) belongs to authors or other copyright holder. The protection of Copyright in journalistic works prescribed by the law of different countries.The article contemplates features of using journalistic works in the Internet. For this purpose, the author analyzes the laws of foreign countries, including Spain

and Germany legislation, which mass media called «Google tax» or «Google law». Also the author explores the judicial practice solution of the disputed issue in the article with UK and USA publishers and Dutch company called «Meltwater». The author analyzes the decisions that have been taken in these judicial cases.The author places special emphasis to free-of-use features of the journalistic works placed in the Internet for information purposes. For this he explores norms of the Law of Ukraine «On Copyright and Related Rights» in the context of reproduction articles of the exploratory aggregators.This article describes norms that need to be improved in connection with the development of new forms of operational support readers the news materials.Based on undertaken study, the author concludes that the reproduction articles of the exploratory aggregators is not covered by the free use of works provided for in the law.The author gives the real-world example of news agencies. These agencies placed the rules of reproducing articles on their websites. The author describes in details the basic requirements specified in those rules.At the end of the article the author concludes and gives proposals for improvement of the Law of Ukraine «On Copyright and Related Rights».

Key words: journalistic work, Internet-publishing, search engines, free reproduction with informational aim

Androschuk H., Afyan A. Conflicts between trademarks and geographical indications: resolution mechanisms.

P. 37-45

The article deals with geographical indications as a legal category and an economic and legal institution. The reasons of conflicts between trademarks and geographical indications and mechanisms of their resolving (conflicts trademark law, the law on geographical indications, unfair competition and commerce under a different name). It is considered administrative system of protection, international agreements (Lisbon Treaty, TRIPS Agreement). The regulatory framework applicable in resolving disputes between trademarks and

geographical indications in the EU (EU Regulation № 2081/92, TRIPS Agreement), the USA (rules BATF, Lanham Act) and in Ukraine is analyzed. The recommendations on alternative mechanisms for resolving conflicts trademarks and geographical indications are made.
Keywords: geographical indication, trademark, conflict, unfair competition, litigation

Tverezenko O. Comparative analysis of the legislation of CIS countries governing contractual relations connected with the creation of the intellectual property objects by an ordering agreement.
P. 46-57
The article provides the research of the legislation and model laws of CIS countries related to the creation of the intellectual property objects by the ordering agreement. It is established that that the copyright objects and topologies may be created under an ordering agreement, unlike inventions, utility models, designs and trademarks. The author finds disputable an issue of creating the plant variety and animal breeds under an ordering agreement.

Wishing to improve the legislation of Ukraine related to the creation of the intellectual property objects under an ordering agreement, in particular, considering that articles 430 and 1112 of the Civil Code of Ukraine are contradictable to each other in matter of defining the owner of the material intellectual property rights, the author suggests the improvements of these provisions of the Civil Code of Ukraine according to the requirements of articles 17 and 107 of the Model Intellectual Property Code for countries-members of the CIS.

Key words: agreement, agreement on creation by the order and use of an intellectual property object, author ordering agreement, intellectual property object, countries-members of the CIS, the Model Intellectual Property Code for countries-members of the CIS.

Revutskyi S. Development of scientific and technological activities from the perspective of economic globalization in the developed countries of the world at the beginning of the XXI century.

P. 58-63

The author examines the development of scientific and technical activities of the developed countries of the world in the formation of the fifth and sixth technological orders at the beginning of the XXI century. The questions of the need to accelerate the innovation process in a period of economic crisis are studied. The issues of the characteristics of high technology in the XXI century are analysed.

Key words: globalization, scientific technological activity, innovations

Petrenko V., Levitskyi V. Improving of system of intellectual property rights judicial protection.

P. 64-70

The article analyzes common factors of procedural difficulties of judicial protection of intellectual property rights and substantiated procedural advantages judicial and procuratorial way to protect.

Existing gaps in the legislation of Ukraine in the sphere of intellectual property, primarily legislative norm determining the jurisdiction of judicial review and, unfortunately, only one way lawsuit proceedings, indicate the need to harmonize it with legislation of the European Union. It is necessary to improve the regulatory framework of intellectual property and improvements mechanisms rights protection in this area.

The legislative strengthening the responsibility for violations of intellectual property rights, improvement of legal regulation of economic aspects of intellectual property rights, including the system of payment of fees and taxes for actions related to the guard rights of objects intellectual property, improvement of legal regulation of economic mechanisms stimulating creativity and so on, are also

necessary.

The authors recommend to attribute the consideration of affairs of settling disputes related with violations rights to the objects industrial property to the jurisdiction of commercial courts considering readiness of judicial corps of such courts in respect of qualified consideration indicated cases subjective composition these disputes, introduced specialization of judges, as well as international experience consideration of the such cases exactly specialized courts.

The article establishes the need of elaboration normative acts with requirements of official documents that must accompany the statements of claim in the courts for the protection of intellectual property rights violations.

Keywords: judicial protection, ways of protection, intellectual property

Olefir A. On the issues of legal protections of biotechologies.

P. 71-83

The article studied the main categories of legal regulation of biotechnology and international specificity of this question. Identified socio-economic and key regulatory shortcomings of the legal protection of biotechnology in Ukraine and the EU, on the basis of which made recommendations to improve national legislation in the context of European integration.
Key words: biotechnology, innovation relations, patent, invention, plant varieties and animal breeds, Directive 1998/44/ EU, Association Agreement between Ukraine and the EU, the Agreement TRIPS

Shabliienko A. Subjects of legal relations in the sphere of e-commerce.

P. 84-90

Active development of e-commerce that is a new field of social relations for domestic law necessitates regulation and establishment of rights, obligations, warranties and liability

of the members of this relationship. However, the primary task is to determine the number of participants who are involved in such a relationship.Considered the most important points of procedure of doing e-commerce, the article distinguishes the general and special subjects (institutional).General subjects in the article include any participants of the legal entities and individuals, state Ukraine, Crimea, municipalities, foreign governments and other entities of public law, all those who serve the customers and suppliers of goods and services via the Internet.The special (institutional) subjects in the article include telecommunication (ISPs) operators, operators of payment systems, certification centers (confirmation) of electronic signatures, registrars and administrators assign network IDs and hosting providers. In addition, the article analyzes regulations that provide information about the subjects. Proposed own approach to determining the list of legal entities in the field of e-commerce in Ukraine.

Keywords: Internet, electronic document, electronic document management, digital signature, e-commerce, e-business

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Kashyntseva O.

Patenting in the sphere of biomedical researches: the influence of ethical norms onto the legal validity of the scientific result.

According to the Ukraini-an Law «On Protection of Rights on Invention and Utility Models» the legal protection shall be granted to an invention (utility model) that does not

contradict the public order, humanity and morality and complies with the requirements of patentability. So, Ukrainian patent system has social and ethical dimensions, which differ according to the type of invention. Actually in considering reforming of the Ukrainian patent system (as it applies to the results of biomedical researches, genetic materials and technologies) the economic dimensions of the patent system cannot be divorced from their social or ethical impact into the patent system and it also has social and ethical dimensions, which differ according to the type of invention. In Ukraine the lack of the ethical norms in national legislation in the sphere of protection of human rights in biomedical researches is a great obstacle to national biomedical researches and makes them invalid for international scientific community. Despite the fact that Ukraine is a member-state of major international legal documents in the sphere of Human Rights and protection of human beings in the field of biomedical researches, it has no proper domestic legislation with enough level of protection of individuals in such sphere.

In Ukraine there is a lack of such kind of scientific works which could be the doctrinal background which consolidate modern morality, ethics of science and law on the basis of the secular background. The fulfilling of humanity, the implementation of principles of respect for human dignity in the sphere of scientific researches should be implemented into the national Ukrainian legislation on the basis of common sense morality. The research of the ethical aspects of biomedicine researches includes the following issues: ethical justification and scientific validity of biomedical researches involving human beings (ethical responsibility in a protocol design); the social and law-making role of ethical review committees; ethical review of external sponsored research including the ethics of ensuring risks and potential benefits; ethical and psychological aspects of individual informed consent (comprehension, renewing, cultural consideration, use

medical records and biological specimens collected for other purposes, wave of consent requirements, consent of vulnerable individuals); ethics of using identifiable and non-identifiable materials of human beings; ethics of researches using health-related registries (databanks of genetic, cancer registries etc.); ethical and moral requirements of the patentability of the intellectual property objects.

Vorontsova K.

The intellectual property rights of subjects on traditional know-ledge in the sphere of health care.

This article reflects the intellectual property rights of subjects on traditional knowledge in the sphere of Health Care. The traditional knowledge is a living body of knowledge that is developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.

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 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 main idea of the article is to provide the analysis of the some intellectual pro-perty rights of subjects on traditional knowledge.

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.

Afanasyeva (Horska) K.

Distribution of illegal mediacontent on the Internet: problems of legal regulation.

The significant increase of channels for getting information and its chaotic distribution lead to the situation when the fragmented information flows are difficult to be regulated. It is difficult to struggle with the uncontrolled mass-media content distribution by means of the legal regulatory mechanisms. The fast growth of the media content distribution in the Internet requires new approaches towards its effective regulation. The author of the article provides the analysis of the existing regulatory models and evaluates their effectiveness in conditions of media transformation and changes in the priority of their distribution channels. The review of foreign innovations regarding the media content distribution shows the possibility of their adaptation to the

media sector of Ukraine. The initiatives on regulation from the part of the mass-media have shown good results proved by the positive dynamics of the pirate and legal content balance in the Internet. The mass media organization representatives consider the priority not in the fight against piracy but in its gradual replacement by the legal content. Nevertheless, the environment of contemporary media is under constant change and the offered methods of the media content regulation are not the final or ideal, especially in terms of law and regulation. The sector itself is in search of new models as in order to prevent the illegal content distribution so with the aim of the sector regulation in general.

Petrenko I.

The legal characteristics of a literary work as an object of copyright.

In the article the author writes about the fact that the legislation of Ukraine, under which the copyright of literary works is taking place, as well as legislation of most countries, does not disclose the concept of «literary work». Thus, the term «literary work» usually covered not only creative works that belong to works of fiction, but such as examination tests, technical manuals, texts of a computer program, advertising slogans, etc. However, not every piece of literature is a subject of copyright protection but only those that meet the requirements of copyright protection. The author’s article outlines the concept of the term «literary work» as well as providing legal characteristics of a literary work as an object of copyright.

By conducting an analysis of the legislation under which Ukraine protects literary works and it is reviewed the existing definition of the term «literary work». Based on research the author points the drawbacks in the legislation and proposes to eliminate them by making appropriate changes. Thus, in accordance with Article 9 part of the work that can

be used independently, including the original title, and is regarded as a work protected under this Act and paragraph e) of Article 10 stating that the database that do not meet the originality criteria are not objects to be protected, that is, the database that meet the criteria of originality of copyright. This means that the law contains a condition under which the sign of «originality» must be available only in certain types of works, while signs of «originality» in other kinds of works is not explicitly required. The author cites the examples of the legislation of the European Union (the United Kingdom and Romania) where the presence of the «originality» characteristics in the work is necessary for all types of works without exception. It is proposed to set such norm, the availability of original features in work of any kind, into the Law of Ukraine «On Copyright and Related Rights».

The paper defines the conditions necessary to assign to a literary work protected by copyright when there are verbal expressions, fixing orally or in writing, and the presence of originality. Also it is proposed a definition of literary works, literary work – a complete or incomplete, original result of creative work of the author, of any content that has a verbal form of expression and fixed orally or in writing.

Androschuk H., Afyan A.

Association Agreement with the EU: implications for the institute of geographical indications in Ukraine.

In the article the analysis of provisions of Agreement about an association between Ukraine and European Union is given that touches institute of the geographical indications: legal and economic value, negative tendencies, economic consequences and ways of overcoming. Research is not limited exceptionally with text of Association Agreement, but touches history of its preparation and negotiation process. Considerable attention is spared to the prospects of protection of European geographical

indications in Ukraine and Ukrainian – in Europe. Through the prism of provisions of Association Agreement in the article the present consisting of legal protection of geographical indications in Ukraine is lightened up and the circle of the expected problems is outlined. At recommendations related to overcoming of problems foreign experience of implementation of similar to Association Agreement provisions is used in the article, in particular, Moldova.

H. Yudina.

Design registration peculiar to EU and Ukrainian legislation.

The processes of integration and harmonization observable in the society practically comprehend all the sectors of legislative relations pertaining to home and foreign economical aspects. Thus, the integration into the EU is one of the prime political strategies of Ukraine. The legislative harmonization into EU is essential act on the way to getting together with the Community. Ukraine, as per Agreement on Partnership and Cooperation with the EU member – states, is obligatory for improving the legislative protection and defence mechanisms similar to those of EU. The right for intellectual property protecting the entity right for the finished product of intellectual activity, descriptive in the legislation, is designated in one of the sections of the Agreement. These results are particularly up to designs. The analysis of the legislation currently in force in Ukraine and EU pertinent to the legal protection of designs makes it possible to affirm that some of the requirements for registration procedure are proved to be different. In such a case, of essential today is the improvement of the design registration procedure by way of harmonization Ukrainian and EU legislations.

Given in this paper is the analysis and the comparison of the requirements pertinent to the Ukrainian and EU legislations in association with the design registration procedure,

particularly the list of documents to the application for a patent on a design necessary for the identification of the date of application submit in Ukraine and EU.

On the basis of the analysis of reference, propositions as to improvements in the Ukrainian legislation necessary for the design protection are made. An emphasis is placed on Point 3 of Art. 11 of the Law of Ukraine on the Protection of Industrial Designs, as well as on Point 3.1 of the Guidelines for Writing and Submission Application which are to be issued anew.

Pyseva V.

Some features of the license agreement for use of patent law in the construction.

The article discusses the establishment of the parties to the license agreement the use of objects of patent law in the construction, as well as the question practical implementation of the relevant treaty on disposal of intellectual property rights in construction industry, namely the determination of the construction phase, in which it is advisable to enter into a specified license agreement.

O. Butnik-Siverskiy, V. Trotska.

The theoretical and methodical aspects of correlation of license agreement and lease contract in the context of the accounting and tax legal system.

The article is devoted to the theoretical and methodical aspects of license agreements comparison for use of intellectual property objects and lease contracts.

This is noted about identification inexpediency of these agreements from the legal regulation position of contract relations in the field of intellectual property, lease, charging taxes and demands of accounting requirements.

Based on the comparative analysis is defined the common and distinctive characteristics of license agreements and lease contracts and also economic and legal features of payments according to this agreements.

It is noted that the rights of property owner (thing) and proprietary rights of intellectual property subject differ.

Attention is accented on the legal regulation specific of the contract relations.

Scientific researches of different scientists are analysed, they compare the non-proprietary character of intellectual property objects and proprietary (material) character of commodities that are given in leasing.

It is clarified, when proprietary rights can be a subject of lease contract.

Based on the conducted analysis has been made the conclusions. Certainly, that license agreements and lease contracts are independent agreements.

Therefore the right of intellectual property should be considered as a separate civil-law institution. So the license agreement and lease contract have some features regarding the legal regulation of contract relations. It requires a distinct reflection in a law.

For this reason to bring the corresponding changes in the Civil Code of Ukraine is offered.

In this article the legislation aspects of accounting and taxation of income are discussed.

Here the norms of Ministry of Finance of Ukraine orders for accounting are ana-lysed. It is proved the necessity of norms clarification, touching the leased non-current assets, taking to account the legislation norms in the field of intellectual property.

Also, special attention is spared to taxation of income in the forms of royalty, lumpsum payments (one-time payments) and leasing payment.

In this article it is discussed the problematic aspects touching the legislation norm of taxation of income in the form lumpsum payments.

It is indicated on weak points in the legislation of taxation of income in the form of these payments. So, a concept «lumpsum payments» is absent in the Tax Code of Ukraine. It is offered to define this concept and insert other corresponding changes to the Code.

Paduchak B.

The features of approval of technology transfer agreements.

This article focuses on study the main forms of state regulations of technology transfer (TT) in Ukraine. TT means transfer of scientific and applied results, objects of intellectual property rights and know-how, that is made by drawing up bilateral or multilateral agreement between individuals or legal entities according to which rights and responsibilities concerning these objects are established, changed or terminated.

The Law of Ukraine «On the State Regulation of Activity in the Sphere of Technology Transfer» provides that state institutions and state entities need to get a permission from Ministry of Education and Science of Ukraine to conclude TT agreement in such cases: when technology procured by the state budget or when technology, created or acquired for the state budget, transferred to legal entities registered in other countries or individuals – foreigners or stateless persons. The Law envisages performance of state expertise of such technologies. And the conclusion of inspection is the basis for granting the approval of Ministry of Education and Science of Ukraine to conclude TT agreement.

It is emphasized that enshrined form of regulation of technology transfer is unlikely to succeed to improve the business climate or increased investments in intangible assets. Permissive nature of concluding such kinds of agreements on the ground of state expertise is unusual for US and EU legislation.

Despite the fact that the legislative provisions for the mandatory approval of certain types of technology transfer agreements are in force more than two years, the government hasn't developed appropriate procedure of such approval. Actually, domestic participants of innovation process denied legal possibility to import (buy) technology for public funds or export technologies created or purchased with public funds.

It is concluded that the solution to this problem lies in the plane or the cancellation of the relevant legal provisions or replacement them on the provisions of the registration of such agreements by Ministry of Education and Science of Ukraine with the ability to check for compliance with all essential and restrictive conditions of TT agreements that are enshrined in the Law «On the State Regulation of Activity in the Sphere of Technology Transfer».

A. Olefir.

Legal enforcement of intellectual property and innovation relations in the Association Agreement with the EU for Ukraine.

Economic usefulness of the patent system is not the same for different states. States exporters technologies receive the benefits of improved patent systems around the world, as income that gives them exclusive possession, license fees cover the cost of patenting. On the other hand, technologically backward state pay increasingly high prices for patented products and seldom or never even receive income from patenting. It is similar asymmetry causes significant

contradictions in the development of international patent law.

Provisions of the Association Agreement between Ukraine and the EU on legal protection of intellectual property include a significant expansion of status holders, strengthening the regime of innovative facilities (additional legal remedies and protection mechanisms, extension of legal protection, more stringent public control over observance of legislation) leaving the government flexibility in the use of some tools.

It should summarize the main consequences of taking these commitments by Ukraine, in terms of national interests, divide them on negative and positive: (1) negative: (a) implementation of the legal protection of critical and scientific publications that have become public domain, impede access to them from domestic consumers, as well as sharing them, the same is true of audiovisual works, which in Ukraine almost created; (b) reform of the national system of geographical indications require adjustment of marketing strategies Ukrainian companies, advertising companies, additional investments; (c) guarantees high protection of intellectual property and product quality lead to substantial price increases; (d) in the case of international cooperation with other countries in the new format, the object of which relate to the subject of the Association Agreement with the EU, Ukraine is obliged to carry out appropriate consultations with the EU; (e) harmonization of significant legislation on the protection of intellectual property rights with the relevant EU regulations require significant budgetary costs; (2) positive: (a) activation of still inert domestic intellectual property market, the prospects for a competitive offer on it from domestic sources; (b) increase competition, strengthen the protection of the interests of holders stimulate innovative activity of local researchers (with the exception of computer programming, where the property rights of the author limited interests of the employer) and innovative enterprises; (c) increase the security of

investments in innovation, which mainly relate to foreign capital, but in the long term, subject to effective state regulation of the economy, can stimulate the modernization of the country; (d) wealthy consumers have sufficient assurance that they are high quality and original products.

Thus, the Association Agreement between the EU and Ukraine is of complex economic and legal problems, primarily the state and national business associations for which it is necessary to develop a program to support national producers, with a view to effective integration into the European market (using the supplied economic opportunities). Even with securing high standards of intellectual property rights in Ukraine, for example, in a land market, this is not enough for the development of national scientific and technological capabilities, providing social sovereign-economic needs. However, optimism is recognized in the text of the Agreement formalities existing cooperation and to intensify its plans. Same main conclusion is that, taking into account the current socio-economic situation in Ukraine, the EU proposed terms of the contract should be assessed positively in general.

B. Lvov.

An input of European standards of economic competition to sphere of industrial property of Ukraine.

The questions of economic competition are investigated in the article. The necessity of providing of her is examined effective legal defense. European experience is analyses in development of economic competition. The basic acts of the European legislation, that regulate this sphere, are determined. There is a necessity of input of the European standards in the field of economic competition to the national legislation of Ukraine. We study the role of scientific bases in shaping the legal principles of economic competition. Going of science of economic right is examined near an economic competition. The value of economic competition is investigated

for development of sphere of industrial property. It is shown that the presence of free market competition leads to equality of economic conditions for the participants of this relationship, which without proper governmental influence can be achieved. Competition law principles provide a framework for the regulation of economic competition. Among these principles, the initial principles of economic competition determine general legal and special principles regulating competition. Positions of the European legislation are analyses in relation to protecting of intellectual ownership rights from an unfair competition. We study the following documents: Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community of 13 December 2007; the Communication from the Commission: EUROPE 2020. A strategy for smart, sustainable and inclusive growth; the EU's economic governance explained; Lisbon Strategy: Presidency Conclusions (Lisbon European Council).

O. Humeha.

Intellectual Property Protection in Ukraine: search for ways to improve.

This article analyzes the theoretical approaches to the protection of intellectual property rights in Ukraine. The problems that exist in the protection of rights. The theoretical constructions arising from the protection and enforcement of intellectual property rights. It is shown that a significant role to play in the civil ways and methods of protection of intellectual property. This leading role to resolve disputes relating to IPR infringements, take judicial bodies. The necessity of adherence to balance private and public interests. We study the EU legislation governing the protection of intellectual property.

Analyzes the provisions of Directive 2004/48/EC on the enforcement of intellectual property rights and the TRIPS Agreement. This makes it possible to identify common

approaches to the protection of intellectual property rights and to establish rules that complement their situation. Also analyzes the problems in the field of intellectual property. The ways to solve them through the development of appropriate legal mechanisms. It is shown that in the function of protection of intellectual property rights implemented security function. Determined to consolidate their national civil and civil procedural law of Ukraine. It is shown that in the function of protection of intellectual property rights implemented security function.

A. Danyluk.

Prospects of Ukraine patent justice.

The article deals with the essence of patent justice. It is emphasized that the existence of the judiciary at the legislative and executive mandatory feature of a democratic state. We study the European experience in implementing patent proceedings. Experience of the Federal Patent Court of the Federal Republic of Germany, which is one of the oldest patent courts in Europe. We also consider the experience of the Swiss Federal Patent Court as one of the youngest patent courts. We study the creation of the European Patent Court. Identify positive features of patent introduction justice in Ukraine. It should remove dualism trial disputes infringement of intellectual property rights. The possibility of the involvement of judges who have legal and technical expertise, will eliminate the need for recourse to experts. Reduced examination of patent disputes should lead to a reduction in material costs and restore reputation. Patent litigation also eliminates the duality of the judicial system, which now exists regarding disputes on intellectual property infringement. The creation of appropriate conditions for the possibility of the rights by introducing specialized justice in the field of intellectual property, which stands Patent justice, should be seen as another step on the stage of democratic reforms that take place in Ukraine.

Patsuriia N.

To the topic of codification of insurance legislation.

The specific feature of the continental European lawmaking is the system of codification. The codification is considered to be the necessary branch of legal norms as the background of the insurances system legislation.

According to the researchers, the codification creates the possibility of synthesizing of the above approach to ensure adherence to the combination of experience, taking into account the achievements of world civilization, especially in the regulation of economic relations. Availability of the codification of legislation makes it possible extension of the core, the fundamental laws that clarify their positions in relation to the development of society instead of infinite publication of many new laws. Dispersal laws shall not provide a consistently systematic, transparent regulation. A large number of laws has negative quality of legislation undermines its effectiveness, the degree of implementation.

From the point of the analysis of codification activities, researchers stress that the codification of the most perfect form of systematization of legislation enhances the stability of legislation, eliminate conflicts, creating a clear, based on the scientific basis of legal documents. It is a legal foundation for building a consolidated regulatory blocks codification systems. In the process of codification activity becomes possible to solve related tasks such as improving the content and form of legislation, and to ensure relative stability of its form and content. It should be noted that at present one of the key objectives of codification activities are primarily address the problem of the following: 1) multiplicity of laws and regulations in force for one and the same issues; 2) improving the substance of the legislation, which aims to address gaps in legislation, disputes between its individual norms; 3) elimination of conflicts,

duplication, obsolete regulatory and legal requirements; improvement of existing institutions of law. The stabilization function to consolidate the legislation appears to act as a result of the codification only stable rules that are designed for a long period of time. This, in turn, will provide an opportunity to ensure stability in the regulation of social relations, legal continuity and orderly legislation, improve the efficiency of legal regulations. Fundamentally, the process of codification makes regulatory requirements that govern important, very broad scope of public relations. In turn, the codification acts containing these provisions, determine a hierarchy of Acts of the area, are regulatory basis for the establishment of intra-system.

The steps of codification insurance legislation of Ukraine in a view of the existence of certain preconditions should be the following: 1) it has to be constantly with internal cohesion and maximum compliance of insurance law and insurance law; 2) it has to be harmonized from the point of the practice of insurance law with scientific approaches justification for codification; 3) it has to bound to ensure a systematic approach to the formation of the insurance law.

It is undisputable that in the case of insurance law codification we provide the internal branch codification. The form of the same expression results codification should be a legal act in the form of the Insurance Code of Ukraine.

The process of codification of insurance legislation of Ukraine should have the following phases: 1) elaboration of a system of insurance law of Ukraine on the basis of which 2) the inventory insurance legislation; 3) identification of conflicts, gaps, repeats and «dead rules» in the legal regulation of insurance of economic relations and their elimination; 4) implementation of normative material processing according to the main principles of codification. It also should have the time between the enactment of the text; the preparation of the text changes and / or additions

to existing legal acts; and preparing a list of acts that are subject to cancellation.

A distinctive feature of Ukrainian legislation is that it is formed in a transformation economy that affects the intensity of the legislative process and driven by the need to reform the society, its transition to a market economy and building the rule of law. Since independence, there is a steady trend towards rapid increase in the total number of legal acts, adopted the system of legislative and executive power. Thus, the Ukrainian legislation at this stage is difficult, diversified entity, which intersects the vertical and horizontal communication, legislative arrays are of different levels, and there have been persistent tendency to unification, which requires further research, and securing legal level of insurance regulations of Insurance Code of Ukraine.

Patskan V.

Inter-parliamentary cooperation of Verkhovna Rada of Ukraine and its role in ensuring of the rights and freedoms of human and citizen.

Research issues of inter-parliamentary cooperation of Verkhovna Rada of Ukraine and its role in ensuring of the rights and freedoms of human and citizen has practical importance for further reform of the legislation of Ukraine in the context of the European integration of Ukraine, Ukraine’s international cooperation, development of Ukraine as a democratic and legal state.

International cooperation of countries in the form of inter-parliamentary cooperation in the field of ensuring of the human rights and freedoms are an important factor in their progressive development and the ability of citizens to defend their rights. Legal protection of rights and freedoms of human and citizen needs adjustment mechanism of regulation of all

such relationships that includes inter-parliamentary cooperation. Democratisation of international relations with growth regulatory role of inter-parliamentary organisations, the development of international standards on human rights are determined the importance of the research of the problematic of that issue. Ukraine is a member of more than a dozen inter-parliamentary organisations, including: Inter-Parliamentary Union, Parliamentary Assembly of the Council of Europe (PACE), the Parliamentary Assembly of the Organisation for Security and Cooperation in Europe (OSCE PA).

Ukraine is a member of Inter-parliamentary Union. Ukraine also takes a part in the regional inter-parliamentary cooperation, in particular – PACE and OSCE PA.

The main influence of the PACE on the ensuring of the rights and freedoms of human in Ukraine are on the reform of the legislation of Ukraine in accordance with the requirements of democracy, rule of law and human rights, in accordance with obligations of Ukraine taken during the entering to the Council of Europe, passes of the Constitution of Ukraine, abolished of the death penalty, passes of new Criminal Code, Civil Code, Criminal Procedure Code and the Civil Procedure Code of Ukraine, recognised the jurisdiction of the European Court of Human Rights, implementing of European principles of local self-government.

It can be noted that there are two main directions of the development of parliamentary in international organisations – extension and deepening. Extension means that inter-parliamentary cooperation beyond the scope of an international organisation. Deepening characterised of increasing of the parliamentary component of international organisation and increasing of its duties. The development of inter-parliamentary cooperation characterised of strengthening of the legal power of decisions passes by inter-parliamentary organisations.

Spreading of inter-parliamentary organisations connect with processes of regional integration which determines the formation of inter-parliamentary cooperation. Inter-parliamentary organisations provide the sharing of parliamentary practice and state-building practice among its members. Inter-parliamentary organisations help to the strengthening of parliamentary democracy and protection of the rights and freedoms of human and citizen.

There are perspectives for further research in this area, including: bilateral inter-parliamentary cooperation of the Verkhovna Rada of Ukraine; inter-parliamentary cooperation of the Verkhovna Rada of Ukraine and the OSCE PA; inter-parliamentary cooperation of the Verkhovna Rada of Ukraine and the PACE.

Inter-parliamentary cooperation of Verkhovna Rada of Ukraine and its role in ensuring of the rights and freedoms of human and citizen are characterised in the given issue.

Kurowski S.

Banking relationships as an object of financial regulation.

The paper analyzes the features of banking relationships as an object of financial regulation. It is emphasized that significant changes in the legal process of banking relationships suffered because of the global financial crisis and regulatory measures and enforcement of character that was introduced in connection with the public authorities. Identify features of banking relationships, their characteristics. To this end, analyzes the features of substantive regulation of banking law and banking law. Relations arising in banking, subject to different policies. Influence finances the development of the banking system. Identify features the participation of the National Bank of Ukraine in banking relationships. Proved that measure the impact of governmental regulator for the relevant financial services market may at

certain moments or keep or undermine this market. This invariably affects the financial system of the country and its economy. Note that in professional literature on finance provides a significant number of definitions banking relationship, but they are all united by shared common approaches to the understanding of the object and the subject composition of such a relationship. This feature subject composition banking relationship plays a significant role in the judicial protection of participants banking relationship, including – in the process of economic justice. An example of judicial practice of arbitration in the system of economic justice, showing features of banking relationships.

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Afanasyeva (Gorska) K.

Changes of conceptual foundations of copyright regulation in a globalized information space.

This article is devoted to the study of new trends and concepts of copyright and legal regulation in the global information space changes. Particular attention is paid to the need of legislative provisions in copyright law inte-rests of civil society in the preservation of cultural heritage and access to it. It is also examined possible mechanisms of regulation of copyright to maintain the balance of interests of all participants in the process of creating and disseminating of information.

O. Matskevych.

Copyright under digitization and digitalizing.

The specifics of the Ukrainian language doesn't allow the finding of the strict translation for the word «digitization». The reason for this being that this term expresses both the general tendency of producing creative works in digital environment (using digital technologies etc.) and the process, action of transformation of analogues works into digital. That is why the author proposes to use two different words to express the notions: digitization – for the tendency, and digitalizing – for the action. That is reflected in the title.

As it follows from the above mentioned, the problems of copyright under digitization and digitalizing will be different. The deliberation of those problems is the aim of the article.

The author considers different points of view on the problem of digitalizing of analogue works. Some scholars believe that the process of digitalizing creates a new form of existing of a work. Other specialists think that digitalizing is a new way of exploitation of a work. There is also a point of view that digitalized work is a derivative work. After the analysis of the mentioned beliefs, the author makes a conclusion that digitalizing is a sui generis action of reproduction of the work.

There are also many problems of digitization that has not been solved up to date, not only in Ukrainian legislation but worldwide as well. Among them are: the possibility of making copies of works extremely fast, at low cost and without any loss in quality, vulnerability to manipulation by third parties, almost impossibility of controlling the exploitation of individual protected works and achievements in global data networks.

The appearance of new types of works, such as multimedia, creates the new problem of including them into current laws

and doctrine. The existing list of copyrightable types of works is not suitable for multimedia and needs to be revised. Talking about the problems of licensing of new multimedia works there must be distinguished between the following problems – multiplicity of rights, multiplicity of right owners, overlapping rights, legal insecurity etc.

As a result of study some conclusions were made:

The work after digitalizing cannot take a rank as a new or derivative;

It is required that practical solutions are created to address the problem of the creation of a global system of copyright protection in the digital environment, as well as upgrading the legislation of Ukraine and other countries in the world, which would take into account new technologies.

Romanyuk M.

General characteristics and basic trends in development of legislation in the sphere of protection of related rights.

The article gives a general description of the Ukrainian legislation in the sphere of related rights protection. The main directions of adaptation of national legislation to the EU legislation, the changes that occur in international law are revising. The current Ukrainian state system of intellectual property protection is broadly consistent with international norms and standards. However, while improving the legislation the international legal regulation of the innovations in this field should be taken into account. Legislation relating to the protection of related rights should be developed through the implementation of modern international standards and eliminating of the contradictions that exist in the current edition of the special laws of Ukraine, Codes of Ukraine and international law acts.

The author analyzed a number of provisions of the directives

of the EU Council and the European Parliament. The key provisions of international law that must be con-sidered in the legislation of Ukraine are highlighted. This applies to the process rights of the owner of the rights in dealing with litigation, harmonization of the rules of broadcasting across Europe and the use of audiovisual works. The directives establish the conceptual apparatus associated with the broadcast and defines the conditions of the right to broadcast. Technological development of society has led to the need for legal protection against the circumvention of technological tools, objects which are protected by copyright and related rights and the revision of the scope of rights to the use of copyright and related rights. The exception to the reproduction right is temporary reproduction, which is defined as the part of the process.

The authors concluded that the need to revise the terms of protection of related rights; set into law the procedure for payment of equitable remuneration.

Shtefan O.

Compliance with procedural form of claim as a condition of the right to sue for copyright protection.

Claim and right on action are fundamental concepts of civil procedure law, in connection with which the problem of action forms of rights protection are constantly in the centre of attention of scientist of civil procedural law. However, the attention of scientists who study the action form of protection focuses on the definition of the claim. At the same time, the question of the observance of procedural expressions of the claim in the literature was not comprehensively investigated.

For the realization of the right to sue a claim from copyright relations it is required not only the presence or absence of certain conditions stipulated by the civil procedural law, but

compliance of the established procedural order of suing for a civil case in court, including a separate place of the observance of procedural expressions of action.

The form of civil procedural action is the claim set forth in writing on a fixed content (art. 119 of the CPC of Ukraine). Thus, the most common in the modern theory of civil procedure is a point of view, according to which the claim is an external expression of the form of action, mode of existence of the claim as a demands for the protection of rights, freedoms and legitimate interests. In this regard, the form always has an official appointment, that means that official role of a lawsuit as a claim form is that it displays elements of the claim (subject, ground and parties), and other information necessary for proper and quick resolution of civil cases. Purpose of the lawsuit as the claim forms is to bring to the attention of the court and other persons involved in the case the essence of the plaintiff that appeals to court to protect freedoms and legitimate interests of them or of others, in certain cases prescribed by the law.

The analysis of civil procedural law and judicial practice have been concluded that adherence to procedural claim form is of great importance in the implementation of the person concerned of the right to sue. Compliance or non-compliance with procedural law on the content of the claim gives rise to the onset of substantive and procedural law of positive (appearance of civil procedural relations) or negative (leave the claim without movement) effects. Compliance of the requirements for content of the claim also promotes fast and effective protection of violated rights and legitimate interests.

Shtefan A.

Restore the situation that existed before the violation of the right and renovation of right as ways of protecting copyright.

Restore the situation that existed before the violation of the right covered a wide range of activities. Committing these activities may require the offending writer or other person who owns the copyright as the protection of the moral rights of authors and the protection of property copyrights. Restore the situation that existed before the violation of the right includes the renovation of subjective rights and also helps to stop the violation and to prevent offenses.

Implementation of restore the situation that existed before the violation of the right is possible under the following conditions:

1) copyright after the violation shall not terminate its existence and can actually be restored by removing the effects of the offense;

2) the existence of copyright is obvious to the court, the right is not contested and is not unrecognized.

The need for restoration of the right may arise when the right partially or completely terminated because of violation. Copyright holder loses the opportunity to use the right. But copyright holder can act in their own interests by the way of restoration of rights.

Restoration of the right as a way to protect copyright can be used by all of the following conditions:

1) the right shall be violated. In the case of threat of violation or failure to recognize this method cannot be applied;

2) violation of the right shall be the resulted of decisions, acts or omissions of public authorities, authorities of the Autonomous Republic of Crimea, local authority, person or entity.

The judgment of the restoration of violated rights can solve

such problems:

1) restoration of the legal status of the relevant entity;

2) recovery of unlawfully infringed relations;

3) termination in violation of the right or threatening to infringe;

4) the forced sale of unfulfilled duties in relation to the entity whose rights have been violated;

5) compensation for lost wealth, property and non-property;

6) the possibility of recognizing

Kasyntseva O.

Ethical validity of researches on human beings as the objects of patent law in Ukraine.

The article analyzes the development trend of legislation in the field of intellectual property through the prism of international ethical standards for biomedical research involving human being. Ukrainian legislation is considered from the perspective of integration into the European legal matter.

G. Yudina.

Concept of industrial design in Ukraine and EU.

In connection with signin of the Agreement on Partnership and Cooperation between Ukraine and the European Communiry and the Member States, Ukraine commits to continue improving the protection mechanisms of intellectual property rights in order to ensure protection on the level that is existing in the EU.

In this paper, reference is made to the analysis and comparison of the defined concepts for industrial design used in Directive 98/71/EC of the European Parliament and of the

Council of 13.10.1998 on the Legal Protection of Designs and the Law of Ukraine On the Protection of Industrial designs.

The notion of concept for industrial design is of special importance in the EU Directive because the definition of that is a fundamental norm in any system pertinent to the legal protection of industrial designs. Objects that are not covered by the legally defined concept cannot be legally protected as an idustrial design.

Moreover, an emphasis is made to the analysis and the comparison of the list of objects that can be legally protected as the industrial designs, as well as those that cannot be protected therein, as per Ukrainian legislation currently in force, the draft of the Law «On Amendments to some Laws of Ukraine on Intellectual property», as well as the European legislation.

In line with the results of the comparative analysis, proposals are made as to the improvement of the Ukrainian legislation pertaining to the legal protection of the industrial designs, in particular:

the concept definition for 'industrial design', as per Art.1 of the Law of Ukraine on the Protection of Industrial design, issue in a new edition

add to Point 2 of Art. 5 of the Law of Ukraine on the Protection of Industrial Designs the concept definition for 'select'.

wide the list of objects that cannot be legally protected as the industrial designs given in Point 3 of Art. 5 of the Law of Ukraine on the Protection of Industrial Designs.

O. Butnik-Siverskiy, V. Trotska.

The theoretical and methodical aspects of correlation of license agreement and lease contract in the context of the

accounting and tax legal system.

The article is devoted to the theoretical and methodical aspects of license agreements comparison for use of intellectual property objects and lease contracts.

This is noted about identification inexpediency of these agreements from the legal regulation position of contract relations in the field of intellectual property, lease, charging taxes and demands of accounting requirements.

Based on the comparative analysis is defined the common and distinctive characteristics of license agreements and lease contracts and also economic and legal features of payments according to this agreements.

It is noted that the rights of property owner (thing) and proprietary rights of intellectual property subject differ.

Attention is accented on the legal regulation specific of the contract relations.

Scientific researches of different scientists are analysed, they compare the non-proprietary character of intellectual property objects and proprietary (material) character of commodities that are given in leasing.

It is clarified, when proprietary rights can be a subject of lease contract.

Based on the conducted analysis has been made the conclusions. Certainly, that license agreements and lease contracts are independent agreements.

Therefore the right of intellectual property should be considered as a separate civil-law institution. So the license agreement and lease contract have some features regarding the legal regulation of contract relations. It requires a distinct reflection in a law.

For this reason to bring the corresponding changes in the Civil Code of Ukraine is offered.

In this article the legislation aspects of accounting and taxation of income are discussed.

Here the norms of Ministry of Finance of Ukraine orders for accounting are ana-lysed. It is proved the necessity of norms clarification, touching the leased non-current assets, taking to account the legislation norms in the field of intellectual property.

Also, special attention is spared to taxation of income in the forms of royalty, lumpsum payments (one-time payments) and leasing payment.

In this article it is discussed the problematic aspects touching the legislation norm of taxation of income in the form lumpsum payments.

It is indicated on weak points in the legislation of taxation of income in the form of these payments. So, a concept «lumpsum payments» is absent in the Tax Code of Ukraine. It is offered to define this concept and insert other corresponding changes to the Code.

A. Olefir.

Legal enforcement of intellectual property and innovation relations in the Association Agreement with the EU for Ukraine.

Economic usefulness of the patent system is not the same for different states. States exporters technologies receive the benefits of improved patent systems around the world, as income that gives them exclusive possession, license fees cover the cost of patenting. On the other hand, technologically backward state pay increasingly high prices for patented products and seldom or never even receive income

from patenting. It is similar asymmetry causes significant contradictions in the development of international patent law.

Provisions of the Association Agreement between Ukraine and the EU on legal protection of intellectual property include a significant expansion of status holders, strengthening the regime of innovative facilities (additional legal remedies and protection mechanisms, extension of legal protection, more stringent public control over observance of legislation) leaving the government flexibility in the use of some tools.

It should summarize the main consequences of taking these commitments by Ukraine, in terms of national interests, divide them on negative and positive: (1) negative: (a) implementation of the legal protection of critical and scientific publications that have become public domain, impede access to them from domestic consumers, as well as sharing them, the same is true of audiovisual works, which in Ukraine almost created; (b) reform of the national system of geographical indications require adjustment of marketing strategies Ukrainian companies, advertising companies, additional investments; (c) guarantees high protection of intellectual property and product quality lead to substantial price increases; (d) in the case of international cooperation with other countries in the new format, the object of which relate to the subject of the Association Agreement with the EU, Ukraine is obliged to carry out appropriate consultations with the EU; (e) harmonization of significant legislation on the protection of intellectual property rights with the relevant EU regulations require significant budgetary costs; (2) positive: (a) activation of still inert domestic intellectual property market, the prospects for a competitive offer on it from domestic sources; (b) increase competition, strengthen the protection of the interests of holders stimulate innovative activity of local researchers (with the exception of computer programming, where the property rights of the author limited interests of the employer) and

innovative enterprises; (c) increase the security of investments in innovation, which mainly relate to foreign capital, but in the long term, subject to effective state regulation of the economy, can stimulate the modernization of the country; (d) wealthy consumers have sufficient assurance that they are high quality and original products.

Thus, the Association Agreement between the EU and Ukraine is of complex economic and legal problems, primarily the state and national business associations for which it is necessary to develop a program to support national producers, with a view to effective integration into the European market (using the supplied economic opportunities). Even with securing high standards of intellectual property rights in Ukraine, for example, in a land market, this is not enough for the development of national scientific and technological capabilities, providing social sovereign-economic needs. However, optimism is recognized in the text of the Agreement formalities existing cooperation and to intensify its plans. Same main conclusion is that, taking into account the current socio-economic situation in Ukraine, the EU proposed terms of the contract should be assessed positively in general.