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«ON THE ISSUE OF THE LEGAL REGIME OF INTELLECTUAL PROPERTY OBJECTS» («К ВОПРОСУ О ПРАВОВОМ РЕЖИМЕ ОБЪЕКТОВ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ»)

В докладе исследуется понятие «правовой режим объектов интеллектуальной собственности» и предлагается его дефиниция, автором выделяются и анализируются его ключевые признаки.

The report examines the concept of the «legal regime of intellectual property objects» and suggests its definition, the author identifies and analyzes its key features.

Intellectual property law is a subject of active scientific interest, including in the Belarusian civil doctrine. However, due attention has not been paid to the study of the legal regime of intellectual property objects as objects of civil rights.

The legal regime serves as the main criterion that distinguishes various objects of civil turnover from each other. The classification of objects of civil rights is fixed in article 128 of the Civil Code of the Republic of Belarus.

Intellectual property objects are protected results of intellectual activity and means of individualization of participants in civil turnover, goods, works and (or) services, and other results of intellectual activity and means of individualization in cases provided for by legislative acts [1, art. 980]. A key characteristic of the legal regime of such objects is their immaterial nature – unlike property rights, intellectual property rights exist for ideas, expressions and designations, which, although embodied in physical formats, are not limited to them.

At the present stage of the development of civil law, there is a growing complexity of the system of objects of civil rights, the emergence of new types of property and rights (for example, digital assets, complex information products), which actualizes the task of forming adequate and flexible legal regimes. In this regard, the concept of the legal regime acquires the importance of a universal tool of legal technology, which makes it possible to effectively respond to the challenges posed by the dynamic development of public relations.

One of the current issues remains the lack of a legal definition of the legal regime in civil legislation, including in the Republic of Belarus. This gap creates doctrinal ambiguity and conflicts in law enforcement practice.

As D.S. Tereshchenko rightly notes, «the category of «legal regime» has become quite widely used in civil legislation and developed in the theory of law over the past decades, but it has not been consolidated either in the Civil Code of the Russian Federation or in other normative legal acts» [2, p. 137].

The term «legal regime of intellectual property objects» is fixed in article 90 of the Treaty on the Eurasian Economic Union (signed in Astana on 05/29/2014), but there is no definition of this concept. «Persons of one Member State in the territory of another Member State are granted national treatment with regard to the legal regime of intellectual property objects» [3, paragraph 1 of Article 90].

The author's definition of the legal regime of intellectual property objects is proposed – «a special legal regulation procedure established by law, which defines the conditions for the creation, exercise, restriction, legal protection and termination of the exclusive right to the results of intellectual activity and the means of individualization of participants in civil turnover, goods, works and (or) services».

This legal regime is characterized by the following key features:

1. In relation to the field of intellectual property, the central element of the legal regime is the exclusive right. A person holding an exclusive right has the right to use the relevant intellectual property object on his own in any form and in any way that does not contradict the law, as well as to allow or prohibit its use by other persons [1, art. 983].

The exclusive right has an absolute character and includes three main powers:

– authorization of use – the ability to carry out all actions related to the introduction of the object into civil circulation;

– authorization of the order – the ability to transfer the exclusive right to another person in whole or in part, to grant the rights of use on the basis of license agreements;

– the power of prohibition is the ability to prevent the use of an object by third parties without the consent of the copyright holder.

2. Expiration date. For many intellectual property objects (for example, patents for inventions, copyrights), the exclusive right is limited in time. After the expiration date, the object goes into the public domain.

3. Territoriality. The exclusive right is valid on the territory of the State where it was officially recognized (for example, where a patent application was filed or where the work was made public in accordance with international treaties).

4. The formalities. For the creation and protection of rights to certain objects (patents, trademarks), their official state registration is required in accordance with the established procedure.

5. Limitations of the exclusive right. In order to balance the interests of copyright holders and society, the legislator establishes restrictions on exclusive rights. According to paragraph 2 of Article 983 of the Civil Code of the Republic of Belarus, restrictions on the exclusive right by providing the opportunity to use an intellectual property object without the consent (permission) of the owner of the exclusive right are allowed in cases, within the limits and in accordance with the procedure established by law. Such restrictions include, in particular, the use of objects for personal purposes, citation, and use for scientific, educational and other purposes.

6. Specific methods of protection. Along with general civil law methods, special protection measures are applied, for example, «the copyright holder has the right to demand compensation from the infringer in the amount of one the base value to fifty thousand the base values, determined by the court, taking into account the nature of the violation» [4, art. 56] and others.

It should be noted that the modern development of intellectual property law requires further improvement of the concept of the legal regime, solving the problems of terminological uncertainty and legislative consolidation of this concept.

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АСПЕКТЫ ПРАВОВОЙ КОНСТРУКЦИИ ПРОМЫШЛЕННОСТИ КАК ОБЪЕКТИВНОГО СОСТОЯНИЯ СИСТЕМЫ ОБЩЕСТВЕННЫХ ОТНОШЕНИЙ В ОБЛАСТИ ПРОМЫШЛЕННОГО ПРОИЗВОДСТВА

Статья посвящена правовому регулированию промышленности как объективному состоянию общественных отношений и материальной основы экономики. Рассмотрены элементы правовой конструкции промышленности на примере актуальных проблем правового регулирования отдельных институтов в сфере промышленности. Сделаны выводы об основах и содержании правовой конструкции и дальнейших аспектах ее развития.

Правовая конструкция промышленности основана на конституционных принципах Республики Беларусь, значение которых predetermined тем, что промышленность, являясь частью государственной социально-экономической системы общества, играет существенную роль в создании материально-производственной основы и развития экономики государства, конституционные