УДК 347
DOI 10.33244/2617-4154.3(16).2024.207-218

V. A. Mykolaiets,
Doctor of Law, professor,
State Tax University
e-mail: mykolaietsva@gmail.com
ORCID ID 0000-0002-2346-3994;
N. B. Novytska,
Doctor of Law, professor,
State Tax University
e-mail: natalka_bn_@ukr.net
ORCID ID 0000-0003-4753-7625

THE EVOLUTION OF LEGAL REGULATION OF SCIENTIFIC DISCOVERY AS AN OBJECT OF INTELLECTUAL PROPERTY

The article is devoted to the theoretical investigation of the development of normative regulation concerning the social relations regarding the procedure for granting legal protection to scientific discoveries, as well as the social relations associated with establishment, examination, registration, and utilization of scientific discoveries. In particular, attention is given to the concepts of "creativity" and "creative intellectual activity" of individuals, closely linked to intellectual property rights; exploration of scientific opinion on the regulation of relations concerning scientific discoveries as objects of intellectual property rights; and examination of the entire array of contemporary regulatory acts directly or indirectly regulating the investigated relations.

The authors draw conclusions regarding the absence of comprehensive studies on scientific discoveries as objects of intellectual property rights, as well as the lack of specialized legislation regulating relations concerning scientific discoveries. A significant milestone in the evolution of legal regulation of scientific discoveries as a distinct object of intellectual property rights was the Draft Law "On the Protection of Rights to Scientific Discoveries" dated December 14, 2004, No. 6414, which defined the procedure for granting legal protection to scientific discoveries and aimed to protect the personal non-property and property rights of authors of scientific discoveries. However, it did not come into force, and its provisions have lost their relevance in the present stage.

The necessity for proper regulation of the outlined relations is an important measure for safeguarding the rights to scientific discoveries, ensuring the development of new technologies, and preventing infringements in this field. Additionally, the authors argue that there exists a global tradition where scientific discoveries hold extremely high value for all humanity and societal development. The significance of developing/improving and ensuring

the protection and defense of the sphere of intellectual activity contributes to the development of the country and its positive image on the global stage and in relations with other states, attracting funding to various spheres of public life.

The methodological foundation of the study comprised a range of general scientific and specialized scientific methods, including general scientific methods (induction and deduction method, systemic analysis method, analogy method, dialectical method) and specialized methods of legal phenomena cognition (historical-legal, comparative-legal, formal-legal, and logical methods).

Key words: *scientific discovery, creativity, intellectual property law, intellectual property, non-traditional objects of intellectual property rights.*

Scientific knowledge emerged with the appearance of Homo sapiens and was not accidental. Among the reasons for its emergence are practical needs such as obtaining food, making tools, clothing, housing construction, and epistemological needs such as satisfying curiosity. These needs have existed throughout human existence and continue to exist, growing with the development of society. Meeting these needs requires new qualities, forms, materials, and production technologies, both in industry and agriculture. These needs can be satisfied through the development of scientific knowledge and research in various spheres of societal life.

Scientific research is inseparably linked to the category of creativity as a specific human activity. According to the definition by the renowned Ukrainian civil law expert O. A. Pidopryhora: «Creative activity, or simply creativity, is the purposeful intellectual activity of a person, the result of which is something qualitatively new, distinguished by uniqueness, originality, and socio-historical uniqueness» [1, p. 540]. A broader approach suggests that creativity is not only inherent to humans and may not necessarily involve awareness, including: «creativity should be considered as an activity in the process of cognition and transformation of the surrounding world, resulting in changes, improvements in the environment, material objects, or the creation of new goods». Creativity accompanies all aspects of our lives, and stimulating creative processes has now become not only a priority direction for self-development for each individual but also a true indicator of societal progress overall [2, p. 277].

According to the assertions of scientists: «Creativity and human creative intellectual activity are primarily associated with intellectual property law – the individual's right to the results of creative intellectual activity or other objects of intellectual property rights as defined by law. The ability for creative and intellectual activity distinguishes humans from other living beings, and such activity can be subject to legal protection by the state. Moreover, it does not depend on the person's age, health status, mental condition, presence of abilities, skills, or talent. To be the subject of legal protection, it is necessary for creativity to include components such as imagination, fantasy, and the psycho-emotional content, which are embodied in the final result» [2, p. 276].

The highest level of scientific understanding is achieved through discoveries. Scientific discoveries can occur within specific fields or disciplines (such as physics, chemistry,

biology, etc.), but more often they have interdisciplinary significance and influence the development of global science and technology, humanity's understanding of the Universe and its laws, as well as societal processes.

The aim of the article is to theoretically explore the development of legal regulation regarding scientific discovery as an object of intellectual property.

The analysis of recent research and publications. In the theory of civil law (doctrine), there is a lack of comprehensive research on the legal phenomenon of scientific discovery as an object of intellectual property, including the absence of studies on the development of legal regulation of scientific discovery. Despite this, significant contributions to the study of intellectual property issues in various aspects have been made by scholars such as I. A. Badytsya, O. V. Burlutsky, V. B. Kharchenko, V. S. Drob'yazko, A. V. Honcharova, R. O. Denysova, Ye. A. Bulat, O. A. Pidopryhora, T. V. Kuznetsova, A. G. Krasovska, A. I. Kubakh, O. V. Pichkur, O. D. Svyatotsky, D. R. Mienko and others.

The main material. Intellectual property rights belong to the absolute rights of individuals to the ideal results of intellectual activity. Intellectual activity is the mental (spiritual, creative) work of a person in the fields of science, technology, literature, art, etc. Unlike physical labor, where the result typically consists of material objects, services, or works, the result of intellectual creative activity is embodied in an objective form, referred to as a "work" (depending on the nature of the activity) in science, literature, art, invention, industrial design, or other results of intellectual activity. A characteristic feature of the results of intellectual activity is their ideal nature. Like any intangible object, they do not experience wear and tear or depreciation, and can only become morally outdated.

According to the universally recognized classification of intellectual property objects, scientific discoveries belong to non-traditional objects of intellectual property, which also include plant varieties, animal breeds, topographies of integrated circuits, trade secrets, and rationalization proposals.

The first normative recognition and classification of scientific discoveries as objects of intellectual property were carried out by the World Intellectual Property Organization (WIPO) in Article 2 of the Convention Establishing the World Intellectual Property Organization on July 14, 1967 [3]. Seeking to promote scientific progress by stimulating authors of scientific discoveries without discrimination, WIPO established a system that publicly associated their names with their scientific discoveries, aiming to promote information about new scientific discoveries for the benefit of the scientific community and the world. Recognizing that the international system for the registration of scientific discoveries facilitates access to scientific information and is of interest to states, especially developing countries, Ukraine decided to accede to the provisions of the Geneva Convention on the International Registration of Scientific Discoveries of April 7, 1978, and adopt the system for the international registration of scientific discoveries within the framework of WIPO's activities [4].

The Civil Code of the Ukrainian SSR in 1963 contained Section V «Right to Discovery». It provided for three articles (514–516) regulating issues of authorship, transfer of author's rights to heirs, and resolution of disputes concerning authorship of discoveries.

With Ukraine's independence until the adoption of the Civil Code of Ukraine (CCU) on January 16, 2003 (which came into force on January 1, 2004), legal regulation of scientific discoveries as objects of intellectual property was absent. The current CCU enshrined in Article 420 a list of objects of intellectual property: literary and artistic works; computer programs; compilations of data (databases); performances; phonograms, videograms, broadcasting programs; scientific discoveries; inventions, utility models, industrial designs; semiconductor topographies; rationalization proposals; plant varieties, animal breeds; commercial (firm) names, trademarks (goods and services marks), geographical indications; commercial secrets [6]. Additionally, the CCU contains a separate Chapter 38 «Intellectual Property Rights to Scientific Discoveries» of Book Four, which includes only two articles: Article 457: «Concept of Scientific Discovery» and Article 458: «Right to Scientific Discovery». Other legislation, particularly specialized legislation similar to that organized for other objects of intellectual property, containing norms regulating scientific discoveries, is absent.

Given the limited legislative framework regarding the regulation of scientific discoveries, let us turn to theoretical developments, particularly in the research of O. V. Pichkur, regarding the conceptual principles of developing legal protection for non-traditional objects of intellectual property rights and the results of scientific and technological activities in Ukraine. A controversial position regarding the status of scientific discovery as an object of intellectual property is expressed: «The discovery of a new property, phenomenon, or regularity of the material world, which may result from fundamental (theoretical) scientific research, is not the result of the creativity of the respective scientist. It is a creation of nature. The description of such a discovery may be subject to legal protection as a scientific work within the framework of the Law of Ukraine «On Copyright and Related Rights»» [7, p. 39]. Scientific discovery is considered the acquisition of all humanity, and according to its nature, exclusive rights cannot be established on it. It only concerns a complex of non-property rights that arise in the author of the discovery in connection with its creation; the author has the right to receive a diploma for it and a one-time material reward [8, p. 118].

O. Slobodniuk asserts that «there is no need to regulate legal norms for non-existent relations, referring to relations regarding the protection and defense of the right to scientific discovery. Thus, the author argues that the norms of civil legislation of Ukraine regarding intellectual property rights to scientific discovery today have only a conjunctural nature, and practical consequences are absent» [9]. However, it is worth disagreeing with this judgment, considering the priority of intellectual creative activity and its defining role for the social and economic development of the state, the preservation of scientific potential, and the innovative development of the country.

Some scholars also make remarks regarding the latter statement, emphasizing the crucial role of scientific discoveries as objects of intellectual property rights. They acknowledge that «legal protection aims to support and safeguard one of the most important objects of intellectual property for the effective utilization of the state's scientific discoveries» [10, p. 248].

O. V. Burlutsky, in his research, notes that «scientific discovery as a purely scientific phenomenon is evidence of the high level of scientific research activity in society, a high level

of science as a whole. Scientific discovery is the highest achievement of any science» [11, p. 247]. Meanwhile, Y.M. Radchenko points out the «undeniable significance of utilizing scientific discoveries provided legislative mechanisms for their protection are established in Ukraine, as they are the result of fundamental scientific research and a specific object of intellectual property» [12, p. 235].

An important aspect in the evolution of legal regulation concerning scientific discovery as an object of intellectual property is that the Verkhovna Rada of Ukraine considered the Draft Law «On the Protection of Rights to Scientific Discoveries» dated December 14, 2004, No. 6414, which defined the procedure for granting legal protection to scientific discoveries and aimed at protecting the personal non-property and property rights of authors of scientific discoveries. The fate of this document ended with its adoption in the first reading on June 14, 2005, but it did not come into force [13]. At the present stage, the provisions of the mentioned draft have lost their relevance and require revision or the development of a new draft that would regulate social relations related to the establishment, expertise, registration, and use of scientific discoveries. The absence of special legislation on this issue leads to the loss by the state of a significant scientific and technical potential, new technologies, and inventions created on the basis of scientific discoveries, which in turn facilitates practically unimpeded use of the highest results of scientific research.

Thus, in the absence of a separate regulatory act to regulate relations related to the establishment, expertise, registration, and use of scientific discoveries and other matters, referring to the Civil Code of Ukraine, according to Article 457 of the Civil Code of Ukraine, «a scientific discovery is the establishment of previously unknown but objectively existing regularities, properties, and phenomena of the material world that bring radical changes to the level of scientific knowledge» [6].

Scientific discovery as an object of intellectual property, addressed in Chapter 38 of the Civil Code of Ukraine, belongs to the so-called non-traditional objects of intellectual property. Not all countries provide legal recognition and protection for this result of intellectual activity on their territory. And in those where such legal protection is provided, its acceptance by the scientific community is not necessarily favorable; there is often a critical assessment of the respective legal mechanisms. For example, in the USSR, where the protection of scientific discoveries was ensured from 1947 (Resolution of the Council of Ministers of the USSR dated March 14, 1947, «On the Committee for Inventions and Discoveries under the Council of Ministers of the USSR»), in the late 1980s, there was a heated debate about the necessity of further existence of the institute of discovery protection, both in general and specifically in the form established by the Regulations on discoveries, inventions, and rationalization proposals of 1973 [14].

Nevertheless, scientific discoveries, as well as all other scientific knowledge in the fields of understanding the material world, are included in the list of potentially protectable objects of intellectual property contained in Article 2 of the Convention Establishing the World Intellectual Property Organization (WIPO), adopted at the Stockholm Conference on July 14, 1967 [3]. This Convention does not establish an obligation for WIPO members to implement protection for all intellectual activities mentioned in the document, leaving the decision on

this matter to the independent discretion of each sovereign state. Another element of the international legal protection system for scientific discoveries is the Geneva Agreement concerning the International Registration of Scientific Discoveries (1978) [4].

The legislation of Ukraine, including the provisions of the Civil Code of Ukraine, provides norms regarding the legal protection of scientific discoveries. However, at present, the implementation of this mechanism is at a rather low level due to the lack of proper normative regulation of the legal regulation of the field of scientific discoveries.

Studying the legislation related to scientific discoveries or mechanisms for implementing rights to scientific discoveries, we can note that mention of such an object of intellectual property is found in the provisions:

1. The Law of Ukraine «On Scientific and Scientific-Technical Activity» in paragraph 22 of part 1 of Article 1: «scientific result - new scientific knowledge obtained in the process of fundamental or applied scientific research and recorded on information carriers. The scientific result may be in the form of a report, published scientific article, scientific report on scientific research, monographic study, scientific discovery, draft of a normative legal act, normative document, or scientific-methodical documents, the preparation of which requires the conduct of appropriate scientific research or contains a scientific component, etc.» [15].

2. Decree of the Cabinet of Ministers of Ukraine, dated August 8, 2007, No. 1029 «On Approval of the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Republic of Korea on Cooperation in the Field of Defense Industry and Material-Technical Support» in paragraph 6 of part 1 of Article 2: «Objects of intellectual property include computer programs, compilations of data (databases), scientific discoveries, inventions and utility models, industrial designs, layout designs of integrated circuits, rationalization proposals, commercial (firm) names and trademarks (marks for goods and services), commercial secrets, and other objects of intellectual property protected by the domestic legislation of the Parties and international law» [16].

3. Order of the Ministry of Education and Science, Youth and Sports of Ukraine dated January 11, 2012, No. 10 «On Approval of the Procedure for Providing Information on the Main Results of Scientific, Scientific-Technical, Innovative Activities, and in the Field of Technology Transfer» in Appendix 5 to the Procedure for Providing Information on the Main Results of Scientific, Scientific-Technical, Innovative Activities, and in the Field of Technology Transfer [17];

4. Order of the Ministry of Justice of Ukraine dated June 2, 2004, No. 43/5 «On Approval of the Classifier of Branches of Legislation of Ukraine», which provides for the branch of legislation – 020.070.030 «Scientific Discovery» [18], distinguished from inventions, utility models, industrial designs, rationalization proposals, plant varieties and animal breeds, commercial names, trademarks, geographical indications, and others.

5. Order of the Ministry of Culture of Ukraine dated June 14, 2016, No. 437 «On Approval of the Procedure for the Selection of Manuscripts, Rare and Valuable Editions for Inclusion in the State Register of National Cultural Heritage» in Section II. «Main Groups of Documents Included in the State Register of National Cultural Heritage» provides that the State Register includes book monuments (individual book monuments and collections – book

monuments) of world and state levels. Thus, paragraph 2 of the section provides that the State Register includes individual book monuments, which include the State Register: certain most valuable editions or copies of editions – first and/or lifetime editions of works by the founders of science and technology containing fundamental scientific discoveries and research…» [19];

6. Order of the State Fiscal Service of Ukraine dated December 30, 2014, No. 410 «On Approval of the Procedure for the Organization of Scientific Research and Scientific-Technical Developments in the State Fiscal Service of Ukraine» [20], which only mentions scientific discovery as one of the types of scientific and scientific-technical activities depending on the nature of the work.

In other regulatory acts of ministries and other state authorities, scientific discoveries are only mentioned without any detailed explanation of their nature or mechanisms for protection, defense, or application. Thus, it can be noted that the regulation of the intellectual property rights institution, one of the non-traditional objects of intellectual property rights, is at a very low level. Moreover, it can be argued that the norms regarding scientific discoveries do not form a coherent legal framework, as the acts in which scientific discoveries are mentioned primarily address other disparate subjects of legal regulation. This, in turn, does not contribute to the development of relations in the field of scientific discovery.

Scientific discovery represents the highest level of scientific achievement. The concept of a scientific result is defined in the Law of Ukraine «On Scientific and Scientific-Technical Activity», where it is described as «new scientific knowledge obtained in the process of fundamental or applied scientific research and fixed on carriers of information. A scientific result can take the form of a report, a published scientific article, a scientific report, a scientific message on research work, a monographic study, a scientific discovery, a draft regulatory act, a normative document, or scientific-methodological documents, the preparation of which requires appropriate scientific research or contains a scientific component, etc.». Legal principles governing scientific research in Ukraine are established not only by the aforementioned law but also by other legislative acts such as the Law of Ukraine «On Scientific and Scientific-Technical Expertise», «On Education», «On Higher Education», and others.

However, it is necessary to note that the practical functioning of legal institutions and mechanisms for the state protection of scientific discoveries in Ukraine ceased in 1992, although norms on the protection of discoveries were retained in the Civil Code of the Ukrainian Soviet Socialist Republic (1963) until 2004, and in the Law of Ukraine «On Property» until 2007. The norms of Chapter 38 of the current Civil Code of Ukraine (2003) aim to revive the legal protection of scientific discoveries in Ukraine as a relatively independent institution of intellectual property rights. The separate mention of scientific discovery in the list of objects of intellectual property rights in Article 420 of the Civil Code of Ukraine also indicates the independence and separateness of scientific discoveries.

Conclusions. Thus, through the theoretical exploration of the development of legal regulation of scientific discovery as an object of intellectual property, we arrive at the following conclusions. From the independence of Ukraine until the adoption of the Civil Code of Ukraine (CCU) on January 16, 2003 (which came into force on January 1, 2004), the legal

regulation of scientific discovery as an object of intellectual property was absent. The current CCU introduced a separate Chapter 38 «Intellectual Property Rights to Scientific Discovery», which contains only two articles providing legal protection for rights to scientific discoveries. We note the absence of special legislation regulating these relations. Similarly, in the theory of civil law (doctrine), there is a lack of comprehensive research on the legal phenomenon of scientific discovery as an object of intellectual property. An analysis of legislation related to scientific discovery or mechanisms for realizing rights to scientific discovery allows us to conclude that the regulation of the institute is at a very low level. Moreover, it can be argued that the norms regarding scientific discovery do not form a coherent legal institution, as the acts mentioning scientific discoveries are primarily dedicated to other fragmented subjects of legal regulation.

Despite this, it is worth noting that fundamental research has always played a special role in the development of scientific and technological progress, with scientific discoveries being the most significant outcome. They represent the highest level of scientific knowledge. Regulation of the rights of authors of scientific discoveries, ensuring their interests, and the protection of the rights of subjects of rights to scientific discoveries contribute to the development of the country and its positive image on the world stage and in relations with other states, attracting funding to various spheres of public life. Therefore, there is a need for proper legislative regulation of scientific discoveries as objects of intellectual property rights, which will help improve and enhance the level of scientific achievements and societal interest in further research. The implementation of legal protection of such objects of intellectual property as scientific discoveries will guarantee the development of new technologies and prevent violations of rights in this area.

СПИСОК ВИКОРИСТАНИХ ДЖЕРЕЛ

1. Цивільне право України : підруч. : у 2 кн. Кн. 1 / О. В. Дзера (кер. авт. кол.), Д. В. Боброва, А. С. Довгерт та ін. ; за ред. О. В. Дзери, Н. С. Кузнєцової. 2-ге вид., перероб. і допов. К. : Юрінком Інтер, 2003. С. 540.

2. Приватно-правові засади захисту прав людини у соціальній державі : монографія / за заг. ред. І. В. Чеховської. Ірпінь : Державний податковий університет, 2023. 566 с.

3. Конвенція про заснування Всесвітньої організації інтелектуальної власності від 14.07.1967 № 995_169. URL : https://ips.ligazakon.net/document/view/mu67k05u?an=2&ed=1967_07_1

4. Женевський договір про міжнародну реєстрацію наукових відкриттів ВІД 07.03.1978 № 999_005. URL : https://regulation.gov.ua/documents/id209678

5. Цивільний кодекс Української РСР від 18.07.1963 № 1540-VI. URL : https://zakon.rada.gov.ua/laws/show/1540-06#Text

6. Цивільний кодекс України : Закон України від 16.01.2003 № 435-IV. URL : https://zakon.rada.gov.ua/laws/show/435-15#Text

7. Пічкур О. В. Концептуальні принципи розвитку правової охорони нетрадиційних об’єктів права інтелектуальної власності та результатів науково-технологічної діяльності в Україні. *Проблеми права інтелектуальної власності* : збірник матеріалів

щорічних традиційних засідань круглого столу з актуальних питань права інтелектуальної власності, 29 квітня 2009 р. Київ : КНУВС, 2009. С. 140

8. Булат Є. А. Деякі аспекти правової охорони нетрадиційних об'єктів інтелектуальної власності. *Право і суспільство.* 2012. № 1. С. 117–119. URL : http://pravoisuspilstvo.org.ua/archive/2012/1_2012/26.pdf

9. Слободянюк О. Спогади про світле майбутнє або право на наукове відкриття в «окремо взятій» Україні. *Інтелектуальна власність.* 2007. № 4. С. 29

10. Гончарова А. В., Мотрюк А. Д. Проблемні питання захисту права на наукове відкриття в умовах науково-технічного прогресу в Україні. *Часопис Київського університету права.* 2013. № 1. С. 218–221. URL : https://kul.kiev.ua/images/chasop/2013_1/yyyyy/218.pdf

11. Бурлуцький О. В. Розгляд проблеми захисту права на наукове відкриття в умовах НТП України. *Часопис Київського університету права.* 2013. № 4. С. 246–249. URL : http://lib.kart.edu.ua/bitstream/123456789/15469/1/Burlutskyi.pdf

12. Радченко Я. М. Проблеми правового захисту наукового відкриття як об'єкта інтелектуальної власності. *Юридичний науковий електронний журнал.* 2021. № 11. С. 232–235. URL : http://www.lsej.org.ua/11_2021/59.pdf

13. Проєкт Закону про охорону прав на наукові відкриття закону від 14.12.2004 № 6414. URL : https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=6414&skl=5

14. Науково-практичний коментар Цивільного кодексу України : станом на 15.11.2007. URL : https://ips.ligazakon.net/document/view/KK000484?an=17

15. Про наукову і науково-технічну діяльність : Закон України від 26.11.2015 № 848-VIII. *Відомості Верховної Ради України.* 2016. № 3. Ст. 25.

16. Про затвердження Угоди між Кабінетом Міністрів України та Урядом Республіки Корея щодо співробітництва у сфері оборонної промисловості та матеріально-технічного забезпечення : Постанова Кабінету Міністрів України від 8 серпня 2007 р. № 1029. URL : https://ips.ligazakon.net/document/view/KP071029?an=27

17. Про затвердження Порядку надання відомостей про основні результати наукової, науково-технічної, інноваційної діяльності та у сфері трансферу технологій : наказ Міністерства освіти і науки, молоді та спорту України від 11.01.2012 № 10. URL : https://ips.ligazakon.net/document/view/RE20459?_ga=2.168650337.1980488226.1703348151-1500804318.1630582485#_gl=1*1w12c42*_gcl_au*ODg0OTgwNDkzLjE3MDAzMTQ2OTk

18. Про затвердження Класифікатора галузей законодавства України : наказ Міністерства юстиції України від 2 червня 2004 року № 43/5. URL : https://ips.ligazakon.net/document/view/MUS2300?an=243&q=%D0%BD%D0%B0%D1%83%D0%BA%D0%BE%D0%B2%D0%B5%20%D0%B2%D1%96%D0%B4%D0%BA%D1%80%D0%B8%D1%82%D1%82%D1%8F&is_no_morph=true&listen_star=true

19. Про затвердження Порядку відбору рукописних книг, рідкісних і цінних видань до Державного реєстру національного культурного надбання : наказ Міністерства культури України від 14.06.2016 № 437. URL : https://ips.ligazakon.net/document/view/RE29066?an=29

20. Про затвердження Порядку організації наукових досліджень та науково-технічних розробок у Державній фіскальній службі України : наказ Державної фіскальної служби України від 30 грудня 2014 року № 410. URL : https://ips.ligazakon.net/document/view/DFS00327?an=1774&q=%D0%BD%D0%B0%D1%83%D0%BA%D0%BE%D0%B2%D1%96%20%D0%B2%D1%96%D0%B4%D0%BA%D1%80%D0%B8%D1%82%D1%82%D1%8F&is_no_morph=true&listen_star=true

REFERENCES

1. Tsyvilne pravo Ukrainy : pidruch. : u 2 kn. Kn. 1 / O. V. Dzera (ker. avt. kol.), D. V. Bobrova, A. S. Dovhert ta in. ; za red. O. V. Dzery, N. S. Kuznietsovoi. 2-he vyd., pererob. i dopov. K. : Yurinkom Inter, 2003. S. 540.

2. Pryvatno-pravovi zasady zakhystu prav liudyny u sotsialnii derzhavi : monohrafiia / za zah. red. I. V. Chekhovskoi. Irpin : Derzhavnyi podatkovyi universytet, 2023. 566 s.

3. Konventsiia pro zasnuvannia Vsesvitnoi orhanizatsii intelektualnoi vlasnosti VID 14.07.1967 № 995_169. URL : https://ips.ligazakon.net/document/view/mu67k05u?an=2&ed=1967_07_1

4. Zhenevskyi dohovir pro mizhnarodnu reiestratsiiu naukovykh vidkryttiv vid 07.03.1978 № 999_005. URL : https://regulation.gov.ua/documents/id209678

5. Tsyvilnyi kodeks Ukrainskoi RSR vid 18.07.1963 № 1540-VI. URL : https://zakon.rada.gov.ua/laws/show/1540-06#Text

6. Tsyvilnyi kodeks Ukrainy : Zakon Ukrainy vid 16.01.2003 № 435-IV. URL : https://zakon.rada.gov.ua/laws/show/435-15#Text

7. Pichkur O. V. Kontseptualni pryntsypy rozvytku pravovoi okhorony netradytsiinykh obiektiv prava intelektualnoi vlasnosti ta rezultativ naukovo-tekhnolohichnoi diialnosti v Ukraini. *Problemy prava intelektualnoi vlasnosti* : zbirnyk materialiv shchorichnykh tradytsiinykh zasidan Kruhloho stolu z aktualnykh pytan prava intelektualnoi vlasnosti, 29 kvitnia 2009 r. Kyiv : KNUVS, 2009. S. 140

8. Bulat Ye. A. Deiaki aspekty pravovoi okhorony netradytsiinykh obiektiv intelektualnoi vlasnosti. *Pravo i suspilstvo.* 2012. № 1. S. 117–119. URL : http://pravoisuspilstvo.org.ua/archive/2012/1_2012/26.pdf

9. Slobodianiuk O. Spohady pro svitle maibutnie abo pravo na naukove vidkryttia v «okremo vziatii» Ukraini. *Intelektualna vlasnist.* 2007. № 4. S. 29

10. Honcharova A. V., Motriuk A. D. Problemni pytannia zakhystu prava na naukove vidkryttia v umovakh naukovo-tekhnichnoho prohresu v Ukraini. *Chasopys Kyivskoho universytetu prava.* 2013. № 1. S. 218–221. URL : https://kul.kiev.ua/images/chasop/2013_1/yyyyy/218.pdf

11. Burlutskyi O. V. Rozghliad problemy zakhystu prava na naukove vidkryttia v umovakh NTP Ukrainy. *Chasopys Kyivskoho universytetu prava.* 2013. № 4. S. 246–249. URL : http://lib.kart.edu.ua/bitstream/123456789/15469/1/Burlutskyi.pdf

12. Radchenko Ya. M. Problemy pravovoho zakhystu naukovoho vidkryttia yak obiekta intelektualnoi vlasnosti. *Yurydychnyi naukovyi elektronnyi zhurnal.* 2021. № 11. S. 232–235. URL : http://www.lsej.org.ua/11_2021/59.pdf

13. Proiekt Zakonu pro okhoronu prav na naukovi vidkryttia zakonu vid 14.12.2004 № 6414. URL : https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=6414&skl=5

14. Naukovo-praktychnyi komentar Tsyvilnoho kodeksu Ukrainy : stanom na 15.11.2007. URL : https://ips.ligazakon.net/document/view/KK000484?an=17

15. Pro naukovu i naukovo-tekhnichnu diialnist : Zakon Ukrainy vid 26.11.2015 № 848-VIII. *Vidomosti Verkhovnoi Rady*. 2016. № 3. St. 25

16. Pro zatverdzhennia Uhody mizh Kabinetom Ministriv Ukrainy ta Uriadom Respubliky Koreia shchodo spivrobitnytstva u sferi oboronnoi promyslovosti ta materialno-tekhnichnoho zabezpechennia : Postanova Kabinetu Ministriv Ukrainy vid 8 serpnia 2007 r. № 1029. URL : https://ips.ligazakon.net/document/view/KP071029?an=27

17. Pro zatverdzhennia Poriadku nadannia vidomostei pro osnovni rezultaty naukovoi, naukovo-tekhnichnoi, innovatsiinoi diialnosti ta u sferi transferu tekhnolohii : nakaz Ministerstva osvity i nauky, molodi ta sportu Ukrainy vid 11.01.2012 № 10 URL : https://ips.ligazakon.net/document/view/RE20459?_ga=2.168650337.1980488226.1703348151-1500804318.1630582485#_gl=1*1w12c42*_gcl_au*ODg0OTgwNDkzLjE3MDAzMTQ2OTk

18. Pro zatverdzhennia Klasyfikatora haluzei zakonodavstva Ukrainy : nakaz Ministerstva yustytsii Ukrainy vid 2 chervnia 2004 roku № 43/5. URL : https://ips.ligazakon.net/document/view/MUS2300?an=243&q=%D0%BD%D0%B0%D1%83%D0%BA%D0%BE%D0%B2%D0%B5%20%D0%B2%D1%96%D0%B4%D0%BA%D1%80%D0%B8%D1%82%D1%82%D1%8F&is_no_morph=true&listen_star=true

19. Pro zatverdzhennia Poriadku vidboru rukopysnykh knyh, ridkisnykh i tsinnykh vydan do Derzhavnoho reiestru natsionalnoho kulturnoho nadbannia : nakaz Ministerstva kultury Ukrainy vid 14.06.2016 № 437. URL : https://ips.ligazakon.net/document/view/RE29066?an=29

20. Pro zatverdzhennia Poriadku orhanizatsii naukovykh doslidzhen ta naukovo-tekhnichnykh rozrobok u Derzhavnii fiskalnii sluzhbi Ukrainy : nakaz Derzhavnoi fiskalnoi sluzhby Ukrainy vid 30 hrudnia 2014 roku № 410. URL : https://ips.ligazakon.net/document/view/DFS00327?an=1774&q=%D0%BD%D0%B0%D1%83%D0%BA%D0%BE%D0%B2%D1%96%20%D0%B2%D1%96%D0%B4%D0%BA%D1%80

В. А. Миколаєць, Н. Б. Новицька. ЕВОЛЮЦІЯ ПРАВОВОГО РЕГУЛЮВАННЯ НАУКОВОГО ВІДКРИТТЯ ЯК ОБ'ЄКТА ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ

Стаття присвячена теоретичному дослідженню розвитку нормативного врегулювання суспільних відносин щодо порядку надання правової охорони науковим відкриттям, а також суспільних відносин, пов'язаних з встановленням, експертизою, реєстрацією та використанням наукових відкриттів. Зокрема, увага приділяється поняттю «творчість» та «творча інтелектуальна діяльність» людини, які є тісно пов'язаними з правом інтелектуальної власності; дослідженню наукової думки щодо регулювання відносин наукового відкриття як об'єкта права інтелектуальної власності; дослідженню всього масиву нормативних актів сучасності щодо прямого чи опосередкованого регулювання досліджуваних відносин.

Здійснені висновки щодо відсутні комплексних досліджень наукового відкриття як об'єкта права інтелектуальної власності, так само відсутності спеціального законодавства, яке регулює відносини щодо наукового відкриття. Важливим у питанні еволюції правового регулювання наукового відкриття як окремого об'єкта права інтелектуальної власності свого часу став проєкт Закону «Про охорону прав на наукові відкриття» від 14.12.2004 № 6414, який визначав порядок надання правової охорони науковим відкриттям та був спрямований на охорону особистих немайнових і майнових прав авторів наукових відкриттів. Однак чинності він не набув, а на сучасному етапі положення втратили свою актуальність.

Потреба в належному регулюванні окреслених відносин є важливим заходом охорони прав на наукові відкриття, стане гарантією розвитку нових технологій і запобігання правопорушенням у цій сфері. Крім того, обґрунтовано, що світовою є традиція, за якою наукові відкриття мають надзвичайно велику цінність для всього людства та розвитку суспільства. Значення розвитку / вдосконалення та забезпечення охорони і захисту сфери інтелектуальної діяльності сприяє розвитку країни та її позитивному іміджу на світовій арені та у відносинах з іншими державами, привабленню залучення фінансування в найрізноманітніші сфери суспільного життя.

Методологічну основу дослідження склали ряд загальнонаукових та спеціально наукових методів, зокрема: загальнонаукові (метод індукції та дедукції, метод системного аналізу, метод аналогії, діалектичний метод) та спеціальні методи пізнання правових явищ (історико-правовий, порівняльно-правовий, формально-догматичний і логічний методи).

Ключові слова: *наукове відкриття, творчість, право інтелектуальної власності, інтелектуальна власність, нетрадиційні об'єкти права інтелектуальної власності.*

Стаття надійшла до редколегії 2 серпня 2024 року