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INTERNATIONAL EXPERIENCE OF LEGAL REGULATION INTELLECTUAL PROPERTY

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Annotation. Historically researched international legal protection of intellectual property. The experience of the protection of intellectual property rights in the USA, Japan and the European Union was studied. The article describes the influence exerted by international organizations and foreign countries on Russian legislation, which provides for the application of measures to protect intellectual property.

Key words: intellectual law, international legal regulation, intellectual property, foreign experience, protection.

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Интеллектуакл мулкни ҳуқуқий тартибга солинишининг
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Аннотация. Тарихий интеллектуал мулкнинг халқаро ҳуқуқий муҳофазаси. АҚШ, Япония ва Европа Иттифоқида интелектуал мулк ҳуқуқларини ҳимоя қилиш тажрибаси ўрганилди.
Калит сўзлар: интеллектуал ҳуқуқ, халқаро ҳуқуқий тартибга солиш, интеллектуал мулк, халқаро тажриба, ҳимоя.

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Аннотация. Исследована в историческом аспекте международно-правовая защита интеллектуальной собственности. Изучен опыт защиты прав интеллектуальной собственности США, Японии и Европейского союза. Описано влияние, оказываемое международными организациями и зарубежными странами на российское законодательство, предусматривающее применения мер защиты интеллектуальной собственности.

Ключевые слова: интеллектуальное право, международно-правовое регулирование, интеллектуальная собственность, зарубежный опыт, защита.

World practice shows that the share of intellectual labor is steadily increasing in the science-intensive products produced by highly developed countries. International agreements play an important role in the protection of intellectual property, since the use of the results of intellectual activity knows no boundaries.

The problems of intellectual property protection are closely intertwined with the problems of technology transfer in the implementation of investment projects [1]. The governments of developing countries seek to control the conclusion of licensing agreements in order to prevent foreign companies from setting excessive prices for the transferred technology, introducing monopoly restrictions on the sale of products manufactured using this technology.

Industrialized countries, for their part, believe that attempts by developing countries to regulate licensing agreements lead to infringement of intellectual property rights. They oppose, in particular, the often practiced by the governments of these countries, the inclusion as mandatory in such agreements of a clause that lifts the prohibition on the disclosure of transferred technology.

The issues of protecting intellectual property rights at forums where problems of international trade were solved began to be actively pursued in the 70s of the XX century. Countries have approved a course to seek solutions to the problems of intellectual property protection within the framework of already existing international unions and agreements, united under the auspices of the World Intellectual Property Organization (WIPO) [2].

At that time, a group of developing countries, supported by the USSR and other socialist states, enjoyed significant influence in WIPO. Developing countries advocated a "just" redistribution of international wealth, seeking the transfer of intellectual property to them free of charge. The Soviet Union, although it had

significant scientific potential, nevertheless, for well-known political reasons, supported the position of the developing countries.

The United States, although then a member of the Paris Industrial Property Union, had not yet acceded to the Berne Copyright Convention and made significant efforts to create, under its auspices, a system for the protection of intellectual property rights in the Western Hemisphere, based on its own non-Western European criteria and legal experience, and relying on close economic cooperation with Canada and Latin American countries.

In addition, given the large financial losses from the pirate sale of intellectual property abroad, the United States began to widely use trade and economic levers to protect this property. An important place among them is occupied by the use or threat of application of administrative and economic measures aimed at restricting imports from violating countries, reducing investment in their economies, canceling lending, curtailing trade and economic cooperation and assistance, both on a bilateral basis and with the participation of international organizations where the United States plays an important role.

This policy of the United States began to exert a significant influence on developing countries interested in American aid and the development of trade and economic cooperation with the United States. At the same time, these measures turned out to be effective in relation to newly industrialized states and developed countries maintaining broad economic ties with the United States.

With regard to the national legislation of the United States in the field of intellectual property protection, back in 1984, the American Congress passed the Trade and Tariff Act, which gave the President of the United States the power to impose restrictions on the import of goods from countries that do not adequately protect the rights to intellectual property. The Caribbean Basin Economic Recovery Act of 1984 and Public Law Namber 98-67 require the President to assess the level of intellectual property rights protection in these countries before provide them with tariff concessions.

Special provisions for the protection of intellectual property have been included in the Generalized System of Preferences, which regulates incentives for the import of goods from developing countries. A special Computer Software Protection Act was passed. The Trademark Anti-Counterfeiting Act 1984 (Trade-mark Anti-Counterfeiting At) strengthened the plaintiff's remedies in civil cases.

The Semiconductor Chip Protection Act, passed in 1984, gave developers the ability for 10 years to exercise control over the reproduction, import, sale and distribution of their product (similar to copyright for a work of art) [3].

Following the signing of the TRIPS Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the TRIPS Agreement), the United States did not abandon its leading role in building an international system for the protection of intellectual property rights, designed to serve as an integral part of the rules and regulations of foreign trade formulated in the WTO. This is connected, on the one hand, with the desire of the United States to help overcome the significant difficulties associated with the implementation of this Agreement, and on the other hand, with the continued leading position of the United States in the international trade of intellectual property [4].

Following the signing of the TRIPS Agreement, a document prepared by the Committee on Intellectual Property, the International Union of Intellectual Property and the Association of Pharmaceutical Industrialists - associations of major American companies specially created to influence the formation of US policy in the field of protecting American intellectual property for abroad. This document justified the need for tough foreign trade measures in support of strict adherence to intellectual property rights.

In April 1997, the Office of the US Trade Representative prepared another list of countries in accordance with "Special Section 301" of the US Trade Act. Argentina, Ecuador, Egypt, the European Union, India, Indonesia, Paraguay, Russia, Turkey were assigned to the category of “priority countries” (to which trade sanctions can be applied for poor protection of intellectual property rights). These are mainly countries where a high level of infringement of intellectual property rights has been registered.

The European Union was included in this list due to the fact that it refused to provide American legal entities and individuals with national treatment in the distribution of income from the rental of videotapes and artistic performances, and also did not make concessions to US pharmaceutical companies, which sharply criticized a single European systems of trademarks. Argentina rejected US pharmaceutical firms demanding effective patent protection for their products.

Japan has undergone a significant evolution in its approach to intellectual property issues. She spoke with other developed countries in the GATT / WTO negotiations in the development and signing of the TRIPS Agreement. Now it is the second

country in the world (after the USA) in terms of total research expenditures. From a consumer of foreign technologies, it has become an important creator of original technical solutions, primarily in advanced industries. This prompted the Japanese government to seek the protection of its intellectual property overseas.

The Japanese system for the protection of intellectual property rights has special accents that differ from the systems of Western countries. Whereas the latter prioritize the task of securing the rights of the owner of property, in Japan, "public utility" is in the first place. In this regard, the practical use of innovations is given primary attention. It is precisely in terms of the speed of development and procurement into production that the Japanese, for example, are far ahead of the Americans and Europeans. The Japanese industry enters the market one month after the start of production. It will take the USA 4 months, the Europeans 2 months.

In terms of the speed of finalizing a new product during its market life, new participants in the international technology business also surpass their competitors. For the Japanese, for example, it takes four months to reach a normal level of quality. USA takes 5 months to reach normal production and 11 months to reach normal quality levels [5].

Accordingly, the preference is given to the protection of a patent applied in practice. Legal regulations actually create opportunities for patent workarounds that block the use of a particular technical development.

A special psychological mood has been created in the country, expressed, for example, in the fact that Japanese public opinion is on the side of their firms, which have successfully improved foreign technical achievements, but in this regard, foreign companies are accused of violations of intellectual property rights [6].

A feature of the Japanese patent system was its active use by the state to ensure accelerated economic growth. Since its inception, it has been characterized by an extreme degree of bureaucratization and closed decision-making.

The regulatory framework created according to Western standards, nevertheless, did not guarantee the protection of the rights of intellectual property owners.The Japanese Patent Office is directly subordinate to the Ministry of Foreign Trade and Industry, which plays a crucial role in determining and implementing the policy of state regulation of the economy [7].

The time that elapses from the moment of filing an application to a patent is much longer in Japan than in other countries. It averages 5-7 years, as opposed to 2-3 years, as in other countries. If we are talking about high technologies and significant

benefits, then it can stretch beyond 10 years (the term of a patent starts from the moment of filing an application).

Over such a long period of time, Japanese companies have managed to establish production using Western technology, sometimes significantly changing it and improving its practical performance. After the Western firm finally obtains its patent, the MVTP has the authority to require it to issue a license for the use of this already patented technology by Japanese companies that are already using it in practice (compulsory licensing).

The members of the European Union traditionally adhere to an orientation towards the system of alliances and agreements in the field of protection of intellectual property rights, which has been formed over the years on the basis of European legal traditions. Chief among them are the Paris Industrial Property Union and the Berne Copyright Union.

The EU also pays great attention to the World Intellectual Property Organization (WIPO), which was created with the active participation of European states and assumed the functions of administering the system of alliances and agreements in this area.

In 1991, the European Commission prepared a program of action in the field of copyright and related rights, which was closely linked with the task of creating a single market for the EU countries (a report entitled "In the development of the Green Paper. Commission's work program in the field of copyright and related rights").

The program proclaimed two main principles - the protection of copyright and related rights should be strengthened, the approach to solving this problem should be as comprehensive as possible. The Commission stressed the need to address all the most important aspects of this topic that may be relevant to the creation of a single market.

In many respects, thanks to the joint efforts of the United States, the EU and Japan, during the Uruguay Round of negotiations, it was possible to reach the TRIPS Agreement, where for the first time high levels of protection of intellectual property rights were established, strict control over the implementation of the Agreement's provisions and a mechanism for resolving disputes were envisaged.

The European Union regards the TRIPS Agreement as an important element of the international system for the protection of intellectual property rights, built on the

basis of traditional alliances and agreements in this area. The EU is making significant efforts to further improve this system.

This is a unique Agreement that differs from other related intellectual property rights. The TRIPS Agreement clearly defines the types and criteria of intellectual property, and also reflects the relationship between the state and the owners of intellectual property. Contains norms defining responsibility for violation of intellectual property rights.

A distinctive feature of this Agreement from other similar ones, in the field of intellectual property rights protection, is that it indicates the timing of bringing the legislation of the participating countries into compliance with it. And it provides for high-quality and proper control over compliance with these deadlines and the requirements of the Agreement.

The norms of the Agreement establish a mechanism for resolving disputes arising between the participating countries. This act classifies intellectual property as objects of international trade, and provides an appropriate degree of protection of intellectual rights.

Thus, having considered the features of international legal protection of intellectual property in the historical aspect, as well as having studied the experience of protecting intellectual property rights in the United States, Japan and the European Union, the influence exerted by international organizations and foreign countries on Russian legislation providing for the application of protection measures is described. intellectual property.

And first of all, this concerns the adopted national legislation, which establishes clear definitions of intellectual property, which require further improvement in the context of law enforcement practice.

References

1. Zueva A.S., Morozkina I.A. On holding an international scientific-practical conference "Actual problems of combating organized crime of economic orientation" // Bulletin of the Academy of Economic Security of the Ministry of Internal Affairs of Russia. 2010. No. 1. P. 89-92.

2. WIPO was established in 1883 to implement international cooperation in the field of protection and enforcement of rights to inventions and other scientific products, trademarks, industrial designs, musical, artistic, literary, photographic and

audiovisual works, etc. In December 1974, WIPO acquired the status of a specialized agency of the United Nations.

3. Materials of the International Scientific and Practical Conference "Intellectual Property Protection: Russian and Foreign Experience" (October 4-5, 2012, Moscow)

4. Varfolomeeva Yu. A. Intellectual property in the context of innovative development: Monograph.- M.: "Os-89", 2007. P. 144.

5. Materials of the International Scientific and Practical Conference "Intellectual Property Protection: Russian and Foreign Experience" (October 4-5, 2012, Moscow)

6. Materials of the International Scientific and Practical Conference "Intellectual Property Protection: Russian and Foreign Experience" (October 4-5, 2012, Moscow).

7. Intellectual property rights; textbook / IA Bliznets, EP Gavrilov, OV Dobrynin [and others]; ed. I.A. Gemini. - Moscow: Prospect, 2013. P. 960.