ЦИВІЛЬНЕ ПРАВО ТА ЦИВІЛЬНИЙ ПРОЦЕС

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SCIVIL LEGAL METHOD OF PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

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Summary. *The article draws attention to the specifics of protection of intellectual property rights in Ukraine by civil and special legislation, the rules of which are designed to protect the subjective rights of right holders and other participants in legal relations in the field of intellectual property. Some aspects of the legal nature of jurisdictional remedies are studied.*

Attention is paid to the specifics of protection of intellectual property rights by civil law, which consists primarily in the methods of protection provided by procedural law. The legislation, the norms of which guarantee the protection of intellectual property and the ways of protection of civil rights are outlined. The existing in the legal literature different views on the classification of methods of protection of property rights are analyzed. The legal analysis of the application of the vindication claim as a means of protection of intellectual property rights is carried out and the author's proposals are formulated.

Keywords: *civil law, intellectual property, lawsuit, protection*

Introduction.

Protection of intellectual property rights is a multifaceted legal phenomenon and is not limited to the institutions of a particular industry. This is primarily due to the complex structure of the legal essence of intellectual property law, which covers all rights related to intellectual activity in production, research and other creative activities. Complicating the structure of this law and ways to protect it is a current trend in the legal systems of most countries, which is due to economic factors, in particular, governments are forced to create incentives for

creative work, trade, including through the introduction of legal guarantees of intellectual property. At the same time, intellectual property rights and property rights are not identical legal categories, which directly affects the choice of remedies and forces to rely not only on the judiciary to protect this right, but also to create other ways of legal protection.

Analysis of recent research and publications.

Despite the fact that the theoretical development of the basic provisions for the protection of intellectual property rights is reflected in the works of domestic scientists, in particular, G. Androschuk, Y. Boshytsky, V. Galunko,G. Rymarchuk, O. Orlyuk, A. Khridochkin, O. Chomakhashvili, R. Shyshka and others, the latest changes in domestic legislation indicate the need for scientific analysis of this issue.

The purpose of the article is to analyze certain aspects of the legal nature of jurisdictional means of protection of intellectual property rights by the rules of civil and special legislation and to formulate the relevant author's conclusions.

Results.

The system of national law of Ukraine consists of separate branches of law, which are sets of relevant legal norms, united by certain principles. Legal protection of intellectual property is regulated by certain provisions of the Constitution of Ukraine, norms of the Civil Code of Ukraine (especially the norms of its book four «Intellectual Property Law»), Criminal, Customs, Tax, Commercial Codes of Ukraine, the Code of Administrative Offenses and a number of procedural codes. and a number of international regulations. This directly affects the protection of intellectual property rights. Thus, on a sectoral basis, civilians consider civil law protection of property rights as a system of active measures applied by the owner, competent state or other authorities aimed at eliminating violations, imposing the obligation to restore the violated right to the violator.

The specificity of the methods of civil protection of intellectual property rights is primarily in the application of such legal mechanisms that overcome obstacles to the exercise of property rights and restore the property status of the owner at the expense of the infringer or other obligated person, including by claiming property belonging to him illegal possession of any person.

Regarding the form of protection, legal science is divided into jurisdictional and non-jurisdictional forms of protection. Jurisdictional form of protection of intellectual property rights is carried out in court and administratively. However, given the format of the article, we will consider only some aspects of the protection of this intellectual property right. It should be emphasized that this method of protection, in relation to individuals, is provided by Article 55 of the Constitution of Ukraine, according to the provisions of which the rights and freedoms of man and citizen are protected by the court. Everyone is guaranteed the right to appeal in court against decisions, actions or omissions of public authorities, local governments, officials and officials. Legal entities are also not deprived of the right to judicial protection, but these guarantees are enshrined at the level of the relevant sectoral Codes and laws of Ukraine. In our opinion, the analysis of law enforcement activities of courts in the field of administrative and criminal liability for infringement of

copyright and related rights requires a separate consideration given the number of administrative and criminal offenses in Ukrainian law, in particular, the expediency of criminalizing certain acts for infringement of copyright and related rights.

The protection of intellectual property rights takes place in lawsuits in courts of civil, administrative, commercial jurisdiction, arbitration, international courts and the newly created Supreme Court of Intellectual Property.

St. 16 of the Civil Code of Ukraine (CC) of 16.01.2003 № 435-I, guarantees the protection of civil rights and interests by the court regardless of whether it is a natural or legal person-each person has the right to go to court to protect their personal non-property or property rights and interests. The second part of this article of the Central Committee provides an indicative list of ways to protect civil rights and interests. In Art. 5 of the Civil Procedure Code of Ukraine of March 18, 2004 № 1618-IV and Art. 5 of the Commercial Procedural Code of Ukraine from 06.11.1991 № 1798-XII, it is determined that the court protects the rights, freedoms and interests of individuals in the manner prescribed by law or contract. At the same time, the legislator gives the court of civil, commercial jurisdiction the right to determine in its decision any method of protection that does not contradict the law. Article 5 of the Code of Administrative Procedure of Ukraine of 06.07.2005 № 2747-IV, establishes six methods of judicial protection in administrative proceedings. In addition, in part 2 of this article, the legislator provided that the protection of violated rights, freedoms or interests of the person who applied to the court may be carried out by the court in another way that does not contradict the law.

According to part 2 of Art. 432 of the Civil Code, the court in cases and in the manner prescribed by law, may decide to: 1) take immediate measures to prevent infringement of intellectual property rights and preserve the relevant evidence; 2) suspension of the passage through the customs border of Ukraine of goods, the import or export of which is carried out in violation of intellectual property rights; 3) withdrawal from civil circulation of goods manufactured or put into civil circulation in violation of intellectual property rights; 4) withdrawal from civil circulation of materials and tools that were used mainly for the manufacture of goods in violation of intellectual property rights; 5) application of a one-time monetary penalty instead of compensation for damages for illegal use of the object of intellectual property rights. The amount of the penalty is determined in accordance with the law, taking into account the guilt of the person and other significant circumstances; 6) publication in the media of information on infringement of intellectual property rights and the content of the court decision on such infringement.

Unlike the provisions of the Civil Code of 1963, the Central Committee of 2003 does not establish strictly defined ways to protect civil rights and provides that the court may protect civil rights or interests in another way established by contract or law. However, establishing flexible variability of ways of protection of civil rights and interests, the legislator provided in the Central Committee of 2003 cases (part 3 of Art. 16) of possible refusal in judicial protection of civil right and interest of the person, in case of violation by it of provisions of part two – fifth Article 13, namely:1) in the exercise of his rights, a person violates the rights of others, harms the environment or cul-

tural heritage; 2) a person acts with the intention of harming another person, as well as abuses the right in other forms;3) in the exercise of civil rights a person does not adhere to the moral principles of society;4) in the case of the use of civil rights for the purpose of unlawful restriction of competition, abuse of monopoly position in the market, as well as in the case of unfair competition.

In our opinion, these circumstances should be established (or refuted) during the court hearings with the adoption of the relevant decision, because otherwise it would be contrary to the constitutional guarantees of the right of everyone to protect their rights in court. On the other hand, in this list, which outlines the limits of civil rights, there are informal (in the legal sense) criteria for assessing the actions of a person, such as - compliance (or non-compliance) of moral principles of society, which complicates and confuses an extremely important issue – civil protection. rights and interests in court.

The scientific literature has repeatedly discussed the thesis that the problem of the right to protection is not only a problem of substantive law, but also a problem of civil procedural law. In this case, such a method of judicial protection as a lawsuit, or rather the right to sue, is perceived and justified by the authors in different ways. Yes, KS Yudelson attached the right to sue only to procedural significance as a legally provided opportunity to go to court to protect their civil rights, and in cases provided by law – to protect the civil rights of others and organizations (Yudelson, 1956: 190).

SI. Without distinguishing the right to sue in the substantive and procedural sense, Vilnyansky considered the right to sue to be «the possibility of exercising his right by coercion, against the will of the obligated person» (Vilnyansky, 1958: 180). Other authors combine substantive and procedural-legal possibilities of protection of the right into a single concept of the right to sue (Kleiman, 1968: 30).

A separate group of authors is united by their approach to the question of the need to differentiate the right to sue in the substantive and procedural sense. Yes, M.J. Stefan notes that the right to sue in the substantive sense, its origin, implementation, termination, the entire legal regime of existence is governed by the rules of civil, labor, family and other branches of substantive law. The right to sue, to sue in the procedural sense, is an institution of civil procedural law. Thus, the right to sue is an opportunity provided and provided by interested persons to apply to the court of first instance with a request to consider and resolve a civil dispute in order to protect subjective property and personal non-property rights and legally protected interests (Stefan, 2001: 331).

Protection of intellectual property rights in Ukraine is guaranteed in cooperation with all branches of law. Intellectual property rights belong to intangible values, and these rights are enshrined in law.

However, the essence of legal protection in the legal literature is interpreted ambiguously: so far science has not formulated clear criteria for the content of protection of civil rights in general and property rights in particular and its delimitation with the legal protection of these rights (Dzera & Kuznetsova, 2002: 217).

The basis of legal protection is determined by the principles of ensuring the inviolability and exercise of civil rights, including and property rights, and measures to prevent violations of these rights. In the context of the research topic it is necessary to pay attention to the specifics of protection of intellectual property rights, namely: «… inability to

protect the object only by owning it, is a cornerstone of legislation in the field of intellectual property rights» (Drobiazko V. & Drobiazko R., 2004: 9).

The authors of the monograph on the problems of improving the legal regulation of private property rights expressed an interesting opinion on the relationship between the principles of protection and protection of property rights at the constitutional level: it is important in the Constitution to define the principles of protection of property rights. Article 13 of the Constitution of Ukraine states that the state ensures the protection of the rights of all subjects of property rights and management, the social orientation of the economy. This wording combines the concept of «protection» used in Article 13 of the Constitution with the actual provision of protection of the rights of property rights, which is expressed in reference to the social orientation of the economy. The Constitution emphasizes that the right to private property is supported by law, based on it and protected by it. Fundamental in this regard is the provision embodied in Article 41 of the Constitution that the right of private property is inviolable… The strength of protection of property rights is expressed in the indication of the impossibility of illegal actions aimed at violating property rights (Shevchenko, Venetska & Kucherenko, 2002: 21).

In view of the above, the system of remedies appears to be subordinate to the system of protection of property rights and is part of this system.

The legal literature expresses different views on the classification of methods of protection of property rights, but the most common is the division of civil law means of protection of property rights into property and contract law. Property remedies are aimed at protecting the subjective right of ownership as an absolute civil right of persons who at the time of violation of the right are not in a contractual or other binding relationship with the infringer. Mandatory legal remedies are intended to protect the interests of the owner as a party to the binding relationship. In this context, the general provisions of contract law fully apply to intellectual property law.

Property and legal means of protection are the recovery of property from someone else's illegal possession (vindication claim) and the removal of obstacles to the exercise of property rights by the owner (negative claim). It is a well-known legal science that these remedies are based on property relations between the owner and all other persons. The content of these legal relations comes down to the fact that the owner has the right to own, use and dispose of property (Pidoprigora & Bobrova, 2002: 332).

I.O. Dzera rightly notes that in jurisprudence it is customary to distinguish two main elements that determine the essence of any claim-the subject and basis. The subject of the claim is the substantive legal claim of the plaintiff to the defendant, and the basis of the reference to his right – the legal facts that led to the violation of this right, and the legal justification for its protection (Dzera, 2001: 54). Based on this understanding of the subject and grounds of the claim, we will try to analyze the acceptability of the vindication claim as a means of protection of intellectual property rights.

It is well known that the subject of the vindication claim is the claim of the owner who does not own the property to the person who illegally owns this property, on the return of individually determined property from someone else's illegal possession. The grounds for a vindication claim are circumstances that indicate the

absence of a legal relationship between the plaintiff and the defendant, the plaintiff has evidence confirming ownership of the claimed property, its disposal from the plaintiff, his stay in kind with the defendant, and so on.

To properly understand the subject of the vindication claim as a possible remedy, it is necessary to mention, in particular, that copyright consists of: personal intangible rights under Articles 423 and 438 of the Civil Code and Art. 14 of the Law of Ukraine «On Copyright and Related Rights» of 23.12. 1993№ 3792-XII. They can not be transferred (alienated) to other persons (except as provided by law – Article 423 of the Civil Code), and therefore can not be claimed. Personal non-property rights of the author do not depend on property rights. Therefore, in the case of transfer of exclusive property rights to the work, personal non-property rights belong to the author of the work (except in cases established by Article 423 of the Civil Code, except for the right to inviolability of the work – Article 439 of the Civil Code). Personal non-property rights of the author are protected indefinitely – property rights under Art. 440 Civil Code andArt. 15 of the Law of Ukraine «On Copyright and Related Rights». Property rights to the work may belong to both the author of the work and other persons who acquired themin accordance with the law or contract.

It is easy to see that such a remedy as a vindication claim cannot be applied to the personal non-property rights of the author. Protection of exclusive property rights by way of vindication, at first glance, is possible, because exclusive property rights are property within the meaning of Art. 190 Civil Code. At the same time, the question arises about the offender's ability to «own» the exclusive property rights of another owner. In our opinion, in this case, vindication as a way to protect exclusive property rights to the work is impossible, because the acquisition of exclusive property rights is not the same as the acquisition of property rights. As we have found out, the subject of the vindication lawsuit is the claim of the owner who does not own the property.

A negative action is a claim of the owner to eliminate violations by third parties in the exercise of his rights, which are not related to the deprivation of property, but create obstacles to the owner in the use or disposal of their property. The key characteristic of this proceeding is the owner of the intellectual property right as a person (persons) who have the right to initiate litigation. It should be noted that a negative claim can be filed for protection, including personal non-property intellectual property rights, the list of which is defined in Art. 423 Civil Code. Despite a fairly consistent understanding of the nature of a negative claim in judicial practice, it is not always possible to use this experience wisely in resolving disputes in the field of protection of intellectual property rights. In particular, the owner of the intellectual property right has the exclusive authority to use the object within a certain period established by law. After a certain period of time, the objects of intellectual property rights become public property. This indirectly indicates some differences between a negative claim in the field of protection of property rights and intellectual property rights.

Conclusions and prospects.

A study of the state system of intellectual property protection and in particular the provisions of the National Intelion

and implementation of state policy in the field of intellectual property,then the National Intellectual Property Authority must ensure the implementation of tasks in accordance with a set of specific powers in the field of intellectual property.

Creation of a new organizational and le.

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Анотація. *У статті звертається увага на специфіку захисту права інтелектуальної власності в Україні цивільним та спеціальним законодавством, норми якого покликані забезпечити охорону суб'єктивних прав правовласників та інших учасників правовідносин у сфері інтелектуальної власності. Досліджено окремі аспекти юридичної природи юрисдикційних засобів захисту.*

Звертається увага на специфіку захисту права інтелектуальної власності цивільним законодавством, що полягає насамперед у способах захисту, передбачених процесуальним законодавством. Розглянуто законодавство, норми якого гарантують захист інтелектуальної власності та окреслені способи захисту цивільних прав. Проаналізовано існуючі в юридичній літературі різні погляди на класифікацію способів захисту права власності.Здійснено правовий аналіззастосування віндикаційного позову як засобу захисту права інтелектуальної власності та сформульовано авторські пропозиції.

Ключові слова: *цивільне законодавство, інтелектуальна власність, судовий позов, захист*