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ИНСТИТУЦИОНАЛЬНЫЕ РАМКИ РАЗВИТИЯ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ

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Рассматривается альтернативный подход к институту прав интеллектуальной собственности и его воздействие на процесс создания новаций. Исследуется влияние института интеллектуальной собственности на мотивацию к проведению исследований и разработок, а также творческой деятельности и креативности. Сравнивается закрепление прав собственности на материальные и интеллектуальные ресурсы. Обосновывается точка зрения об отсутствии необходимости создавать долгосрочную интеллектуальную монополию. Анализируется положительное и отрицательное влияние интеллектуальной монополии на научный и экономический прогресс. Приведенные аргументы открывают возможности для изменения экономической политики в целях создания институциональных условий для свободного доступа к продуктам интеллектуального труда гражданам нашей страны, что позволит активизировать интеллектуальную деятельность и использовать мировой поток знаний для прогрессивного использования.

Ключевые слова: право собственности; интеллектуальная собственность; интеллектуальный ресурс; интеллектуальная монополия; интеллектуальный капитал.

INSTITUTIONAL FRAMEWORK OF INTELLECTUAL PROPERTY DEVELOPMENT

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The main goal of the article is to demonstrate alternative view on intellectual property institute and its influence on the innovations creation process. The article deals with the impact of intellectual property rights institution on motivation for research and development, as well as for creative activity and arts. The comparison and contraposition are established between fixing property rights on tangible resources and intangible or intellectual resources. The arguments are made on the point of no necessity in creating long term intellectual monopoly. The pros and cons of intellectual monopoly influence on scientific and economic progress were analysed. The reasons shown in the article open opportunities for the changes in economic policy aiming for institutional framework creation that provides free access to intellectual results for every citizen. It would help to stimulate intellectual activity of our own and to benefit from global technology and knowledge flow.

Key words: property rights; intellectual property; intellectual resource; intellectual monopoly; intellectual capital.

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Institutional framework of intellectual property development

It is accepted in economic theory to indicate objects and subjects of property. Individuals and legal entities between which there are property relations, are subjects of property. The first group of subjects are private persons who own the means of production, commodities or other pieces of property. The second group – an organization as a group people that exercise their right of possession, use and disposal of property together. The third group is the largest subject of ownership that is the state (society), which manages the property belonging to citizens of the state (society). In the Constitution of the Republic of Belarus 13th article is devoted to property rights, the first part of which establishes two forms of property: public and private.

Private property is a type of property, when the exclusive right to possession, disposal and use of the property object and its income has a private person. The objects that could be privately owned are houses, buildings, apartments, cash, securities, enterprises, other property. Deep, progressive significance of private property – it mobilizes the maximum human potential, initiative, experience, skills and knowledge. The main idea of Hernando de Soto's monography "The Mystery of Capital" dedicated to a well-functioning private property and due to the functioning of the private property institution, the property creates capital [1]. In modern world, defining value acquired such an object of property as products of intellectual work or so called intellectual property.

The theory of property rights considers the institutional and economic relations with respect to the property rights. Intellectual property could be economically implemented through step by step cleavage of the intellectual product owners' rights among the product creator, the government and organization.

In present economic life economics and law are organically connected in their interaction, thereby the diversity of ownership application increases. Significant contribution to the development of these ideas made a Nobel Laureate of 1993 in Economy – Douglass North (1920–2015). In his Nobel lecture, he said that "the most important element of economic growth policy is the formation of a political system, which would establish an effective system of property rights and ensure their protection" [2].

To carry out its economic function, the property should bring its economic benefit to the subject. The usefulness of the property can be expressed in the form of profits, income, dividends, rents or in intangible form. And if the economic sense of ownership is the ability to generate income, the intellectual property also manifests itself economically provided income opportunities (direct or indirect) of the use of intellectual property rights in practice. And now it is the intellectual property that is the driving force for the world economies development.

As we agree with the authors of the theory of property rights (R. Kouz, A. Alchian, G. Demsets, D. North) about the specification of property rights we should exclude third-party access to resources. Thus, property rights belong to those who value them above and who could benefit from them greatly. This is the essence and purpose of specification of property rights.

The existence of intellectual property rights is based on the same basis. It is believed that the general economic problem is that the market is not able to provide an effective level of innovation in specific areas of technological and creative activity, especially if the research and development activities (R&D) require high costs to carry and the result is relatively easily copied, especially when the identification of the innovation does not require long time. In such a situation, easy access to scientific advances and competition reduces profit developers to zero, which will not allow to recoup the costs of research and development. On the other hand, copying allows to reduce consumer prices, to avoid a monopoly position in the market and the associated with monopoly loss for the society, but it leads to a non-optimal level of investment in research and development. This is justified by the fact that most companies are not prepared to invest in developing new technologies and creative ideas, when their competitors can at any time enter the market and deprive them of the temporary monopoly profits before it pays off the investment and research costs.

The resources, the labor force are property objects, these are anything we could use or consume. The objects of property are buildings, structures, equipment, results of intellectual work, information, money, securities and other property. Property itself is not static, its composition can expand under the influence of scientific and technological progress, the development of productive forces. In this regard material objects are displaced by intangible property – the products of intellectual work, called intellectual property objects: discoveries, inventions, scientific knowledge and information.

In the institutional analysis of intellectual property rights property shows its social nature. Ando also the existence and transparency of the recognition of institutions, regulation, registration, movement and transition of the intellectual property rights is necessary. These institutions not only to protect the rights of creators of intellectual products, but also the rights of investors, licensors and all involved in the implementation process and production innovations. Sharp conflicts of interest, lack of respect and massive copyright infringement, mass practice of "piracy" is evidence of the absence of the intellectual property system of institutions, that could match the interests and behaviour of all actors of innovation process [3].

Classically there are two arguments in favour of intellectual property – an argument coming from the natural rights and utilitarian arguments. According to the concept of natural rights, the product of the human intellect creation should be protected by law in the same way as tangible assets. A person has a natural right for the products of their intellectual work. To the extent that a person owns their own body and working process, which means the results of their work, both physical and intellectual.

However, the most common approach in intellectual property protection is a utility that uses the concept of economic efficiency. Utilitarian argument lays on the basis that proper protection of intellectual property leads to increase of innovation and creativity. Without copyright to their works, the authors do not bother to write novels, software, or perform other types of work. Because their intellectual and financial investments cannot be recouped.

A legislative monopoly is justified when fixing copyright, obtaining licenses and patents increase economic wealth effect and increase creation. Utilitarians believe that the market itself is not able to provide an effective level of innovation, particularly in the areas of technology and creativity. Here, as well as in the case of a natural monopoly – a very large initial costs. In order to invent something, you should first go through a lot of wrong ways: to invest in people's heads, in preparation, in experiments in long-term operation. And when this is fixed, large and long-term costs should pay off. For them to have paid off, the manufacturer should get the extra excess profits for a long enough time, which should not affect the price of the product.

Now we try to understand whether it is possible to protect the rights of inventors of property in the absence of strict intellectual property protection system, and how reasonable that the latter is the only way to encourage innovation and creativity. A discussion of the problem is from the economic point of view, not from the perspective of law. Or rather, what the law should be like as the solution for this problem from the economic point of view.

Even without a patent, the inventor still has the advantage of being first in the market and make a profit while competitors just trying to replicate his invention. Vain effort to suppress competition and receive special privileges, economists relates to rent-seeking behaviour. The reason for this comes down to the establishment of a legal monopoly. And obtaining a patent in practice is an attempt to suppress the development of innovative competitors. Most inventors take no effort to improve their invention, which may be crucial for the development of society, but rather to establish a patent for an invention and its protection, including the monitoring of patent infringement and subsequent judicial proceedings.

Historically, some of the inventions that have been based on a patented technology, had no right to exist because of the valid patent of the first invention, which gave an advantage to the first inventor in court and did not give the possibility to the existence of a more advanced version, which ultimately slows economic growth. Example – Watt's steam engine. The patent was received in 1769, and only since 1800, when Watt's patent expired, the designers from other countries were actively involved in the improvement of this steam engine model.

Time after time it turns out that the great inventors whose names are known to us from school, right after they made the first discovery, switched their considerable energy and no less remarkable ingenuity to fight for the right to receive income exclusively. Patent of James Watt for a long time slowed down the development of improved versions and did not bring him much money. Watt earned much more, when he was forced to take new developments and compete with his followers.

Thus, obtaining a patent is used as a tool that stifle economic progress and is aimed at eliminating competitors. Most of the profits of companies consists of royalty, rather than received through the sale of finished patented products. And a company without patent protection would not receive royalties.

As evidence we could use that in 2012 Google Inc., the social network Facebook and another six companies have spoken out against IT-patents, which describe "abstract ideas" [4]. According to these companies, such patents are a threat to technological progress. If someone will figure out how to translate "abstract idea" to life, the patent holders can sue him in court for violation of their rights. Such a system "hinders rather than promotes technological progress", the companies claimed.

Boldrin M. and Levine D., the authors of the articles and books on intellectual property [5] oppose intellectual monopolies. Of course, they do not deny that inventors should be rewarded for their work. However, the fair reward for intellectual work and long-term royalties, which prevent access to the results of intellectual work – is not the same thing. Thus, they propose to consider the costs for the ideas and designs as variable costs, rather than fixed costs. In other words, there must be no periodic payments in the form of rent, just a one-time purchase of the rights.

It is easily seen that according to this approach the pricing of goods changes radically. No need to pay royalties to the developer (goods cheapen – one), the new company does not need to buy patents to enter the market, which intensifies competition (goods cheapen – two), there are no additional costs for legal squabbles (goods cheapen – three).

Alternative shows the possibility of the company profits from the production and after-sales service, which actually takes place as the company's policy after patent expiry. Also one of the alternatives to this situation could be the sale of licenses for inventions to other manufacturers, which may allow to avoid the delay of progression and provide an opportunity to make improvements to the invention.

However, intellectual property protection system is balancing between the rights of consumers to access and use the inventions for free and the rights of inventors for reward and profits from their invention. In this context, economists talk of incentives to innovation. In this case when free access for consumers is an extremely good practice, this practice for manufacturers and inventors fails to provide sufficiently strong incentives for inventive activities. From this it follows that intellectual property is intended to reconcile the interests of both sides: to provide strong enough incentives for inventive activities and benefit from the free use of existing ideas. Since both sides agree that intellectual property – a "necessary evil" that encourages innovation, and differences only in the fact that it is necessary to set the border line.

In economic terms, there are two aspects of intellectual rights: the right to buy and sell copies of the ideas and the right of control over how people use these copies. The first right is not discussed. For copyright is the right of first sale for the creator. The second right is under some questions. It creates a monopoly – forcing the government to oppose the use of prohibited methods stipulated by the owner of the copyright or patent. So, not only protects the rights of inventors, but also those who legally acquired the right to copy from the original source. First encourage innovation, the latter influence the spread, adoption and improvement of innovation. The question is, how comparable social costs and social benefits from the presence of intellectual monopoly are, which is expressed in control over how consumers use the product they purchased.

Promotion of science and creativity is an essential element of economic well-being, from the solutions to global problems such as poverty to completely mundane problems as boredom. The purpose of copyright and patents should not be enriching the few at the expense of the majority, but these rights should benefit society as a whole. None of the inventions – either online or steam engine – were not invented for the protection of exclusive rights. In the case of the absence of monopoly on the ideas, the competition becomes tougher – as a result, innovation and creativity flourish. Whatever the world without patents and copyright would be, it would not become place, devoid of great music and new healing medicines.

As a result, the only reason for the presence of intellectual monopoly is a significant increase in innovation and creativity. But for example, innovation in software originally occurred in the absence of any legal protection, and only closer to 2000, companies began to claim the copyright or patent protection. For the young, dynamic industry full of ideas and creativity, intellectual monopoly does not play big role. It becomes important when companies run out of ideas and new competitors come into the market with their fresh ideas. Then those who lack the ideas, ask the government for help in order to protect their old profitable way of doing business. This is confirmed by the history of Microsoft, which in the early days of its business, full of creativity, have made very little effort to protect their "intellectual property". Then, as now, in the XXI century, they spend a large part of their time and energy to prevent copying.

An example of the opposite – free resources, prevailing on the Internet. For example, the Google is runs on free Linux operating system, free programming language PHP is predominant in the world wide web space, Mysql is widely used database, companies themselves place their products in open databases (open source). The question arises what make companies providing their product for free. The answer can be found in the detailed analysis of the facilities of Google, that are also always free for the user. The company receives the greatest part of income due to online direct advertising: selling on 24/7 auction words and phrases, search requests, and there after the ads are placed in a dedicated site search engine page rank in order of compliance with the request. The advertiser pays Google Inc. for each access to the particular ad. After the company's IPO market value of the company on the stock exchange was more than 23 billion dollars. Only in one year share price rose more than 3 times, and in May 2016 Google has become the most valuable US company, its value amounted to 493 billion dollars [6]. In February 2017 the Google stock value was 828 dollars [7], even considering the unfavourable conjuncture and a significant drop in prices in July, 2016.

After analyzing the above data and theory, it can be concluded that the ownership of tangible assets is justified, because these assets are rare and only in this way can serve as a capital for the owner. While from an economic point of view, there is no point in determining the ownership of the goods, which are in abundance. The same with the intellectual assets – no conflict can appear about the use, as intellectual property rights are not related to a lack of allocated objects, and intellectual property rights are only intended to create scarcity and monopoly position for the owners of these rights. Ideas in natural circumstances are not scarce. When using a scientific article, the author remains his article, but at the same time you have it as well. Several people can use and implement the idea independently. Therefore, results of intellectual work are not scarce in the sense material assets are, and intellectual property right leads to unjustified monopoly granted by national legislation.

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