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РАЗВИТИЕ ИНСТИТУТА АВТОРСТВА В ПРОМЫШЛЕННОЙ СОБСТВЕННОСТИ

DEVELOPMENT OF THE INSTITUTE OF AUTHORSHIP IN INDUSTRIAL PROPERTY

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Информация об авторе

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Аннотация. В статье проанализированы исторически сложившиеся и теоретически обусловленные подходы к институту авторства в праве промышленной собственности; проведен сравнительно-правовой анализ правового статуса автора изобретений и промышленных образцов в отдельных государствах — членах Евразийской патентной организации (в Республике Армения, Республике Беларусь, Республике Казахстан, Российской Федерации). Особое внимание уделено анализу соответствующих норм евразийского патентного права.

В результате проведенного исследования автор статьи сформулировал предложения по совершенствованию отдельных аспектов института авторства.

Ключевые слова: автор, авторство, изобретение, патентное право, промышленный образец, промышленная собственность

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- **Abstract.** The author analyzes historical and theoretically determined approaches to authorship in industrial property law. The article provides a comparative legal analysis of the legal status of the author of inventions and industrial designs in certain member states of the Eurasian Patent Organization (the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, and the Russian Federation). Special attention is given to the analysis of the relevant provisions of the Eurasian patent law. As a result of the research, the author of the article proposes to improve specific aspects of authorship in the field of industrial property.

erty of 1883, stipulating the right of the inventor to be mentioned as such in the patent [1, Article 4ter].

The theoretical prerequisites that caused the renewed interest in authorship issues and prompted legislators to reflect it in the patent laws can be found in the doctrine of patent law, in the theories developed by scholars in the XVIII century and comprehended by their followers in the XIX century [2, p. 80–186].

It should be noted that even the proprietary theory, which was later recognized as untenable by the developers of the concept of intellectual rights, emphasizes the importance of authorship through the following thesis: *“the idea is the property of the author, although it is property sui generis”* [2, p. 101].

According to the theory of personal law (personal theory), which is often attributed to Immanuel Kant and developed by an outstanding Russian legal scholar of the late XIX century Alexander Pilenko, the law (patent or copyright law) is based on the invention (work), which *“becomes a part of the author’s personality by virtue of the efforts expended on it”* [2, p. 110–111]. This conditions the author’s ownership of both original property rights and non-property rights, including the right of authorship.

In the Soviet period of Russian state development, the approach to legal protection of inventions and other objects of patent law was significantly transformed to meet the needs of the state-controlled economy and the prevailing regime. Despite the fact that the state typically owned the property rights to the results of creative activity, the authors still retained personal non-property rights.

Currently, nobody doubts the necessity of authorship protection with respect to patent law objects and its importance for the creation of new protectable products.

Creativity and, accordingly, authorship cannot be associated or equated with entrepreneurship, despite the expansion of creative activity, the emergence of industries focused exclusively on intellectual (creative) work, and the qualitative transformation of intellectual activity into paid professional activity.

Engaging in creativity on a regular basis, the author does not become less vulnerable or economically more protected compared to the customers of his work results. There is always a risk of creative failure. This is acknowledged by the legislator, who generally limits the author’s liability in such cases and sometimes provides for more favorable consequences, such as remuneration of the cost of work performed by the author prior to the impossibility of obtaining the results provided for in the contract. For example, according to paragraph 3 of Article 769 of the Civil Code of the Russian Federation [3], the customer bears the risk of accidental failure to fulfill the contract and perform research and scientific work.

This is a crucial rule that protects the author and confirms the legal opinion that society has towards him today.

The products of the author’s creative activity, even if produced regularly, cannot be equated with goods manufactured by entrepreneurs. We should not forget about their significance for the development of science, technology and culture, i.e., their general value (these are goods for the whole society and not for an individual consumer).

Intellectual law, aimed at stimulating creative activity and, consequently, authorship by establishing a system of not only property rights but also personal non-property rights, exists precisely owing to this value.

Authorship and the rights associated with it regarding the results of creative activity, including patent rights, are currently recognized worldwide. In particular, as mentioned earlier, they are provided for in international treaties establishing fundamental standards for the protection of certain results of intellectual activity.

The significance of the author is also provided for in the international treaties establishing regional systems for the legal protection of industrial property.

The Protocol to the Eurasian Patent Convention on the Protection of Industrial Designs (hereinafter referred to as Protocol) was adopted on September 9, 2019 [4]. Article 4 (1) of this Protocol defines the author of an industrial design and also grants him the right to obtain a Eurasian patent for the said object of patent law.

In addition, Article 6 (1) of the Protocol summarizes that a Eurasian patent certifies, inter alia, authorship in respect of an industrial design, while Article 9 (1) of that international treaty establishes that the author of an industrial design has the right of authorship, i.e. the right to be recognized as its author.

The classical understanding of the author and his or her rights is also embedded nowadays in the legislative acts of the States party to the Eurasian Patent Convention, including the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation.

According to Article 18 (1) of the Law of the Republic of Armenia “On Patents” of March 30, 2021 [5], and Article 18 (2) of the Law of the Republic of Armenia “On Industrial Design” of March 30, 2021 [6], the author (also known as inventor in respect of inventions) is a natural person with the creative work whereof the invention or industrial design has been created.

A similar definition of the author in respect of inventions and industrial designs is found in Article 5 (1) of the Law of the Republic of Belarus “On Patents for Inventions, Utility Models and Industrial Designs” of December 16, 2002 [7]. The definition of the author, formulated in Article 9 (1) of the Patent Law of the Re-

public of Kazakhstan of July 16, 1999 [8], as well as in Article 1347 of the Civil Code of the Russian Federation [3], does not differ from the mentioned definitions.

The provisions of these legislative acts also regulate co-authorship. However, the persons who provided non-creative assistance in the creation of an object of patent law, such as technical, organizational, material support, assistance in registration of rights, etc., are not recognized as co-authors [see, for example, 5, Article 18 (2)]. According to the Law of the Republic of Belarus “On Patents for Inventions, Utility Models and Industrial Designs” of December 16, 2002 [7], and the Patent Law of the Republic of Kazakhstan of July 16, 1999 [8], those who did not personally contribute to the creation of the patent law object in a creative way are not recognized as co-authors.

According to the above-mentioned national legislation, authors of inventions and industrial designs have an inalienable right of authorship, which shall be protected for an indefinite period of time [see, for example, 5, Article 18 (3)].

The author shall have the right to be mentioned in the application for invention or industrial design or the patent as such [see, for example, 5, Article 18 (6)].

The importance attributed to authorship in the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation is evident when analyzing the provisions of the legislative acts of these States covering the right to obtain a patent. This right is initially assigned to the authors of solutions patented as inventions or, respectively, industrial designs [see, for example, 7, Article 6 (2); 3, Article 1357 (1) of the Civil Code of the Russian Federation].

Other persons acquire the mentioned right by contract, by succession or by certain statutory provisions. The latter applies to so-called service industrial property subject matters that belong to the employer, unless otherwise provided for in the contract between him and the employee [see, for example, 8, Article 10 (2)].

It is important to highlight that, although the wording is dispositive, it does not in fact ensure the interests of the authors of inventions and industrial designs created as part of employment relations. The authors' rights are almost always limited in this case.

The opposite situation arises if the employer fails to dispose of his or her rights over the service industrial property subject matter within the period prescribed by law. Then the right to obtain a patent for such subject matter will be returned by virtue of the law to the employee.

It would be desirable for such a term to be reasonable but not excessive in order to ensure the rights of authors. However, the tendency is quite contrary in the Russian Federation.

The original wording of paragraph 2 of Article 1370 (4) of the Civil Code of the Russian Federation [3] provided for a four-month period for the employer to dispose of the service industrial property subject matter. As of January 1, 2022, this term was increased to six months [9, Article 2].

For comparison, this term is limited to 3 months in the Republic of Armenia and the Republic of Belarus [see, 5, Article 19 (6); 7, Article 6 (3)]. This term is 4 months in the Republic of Kazakhstan [8, Article 10 (7)].

But even in the case when a patent for a service invention or, respectively, a service industrial design is obtained by the employer, the author acquires the right to receive remuneration [see, for example, 5, Article 19 (7); 3, Article 1370 (4)]. This right is of a compensatory nature and is intended to encourage the creative activity of authors of technical, artistic and design solutions, which is the main function of patent law.

The fair remuneration of authors for the use of the results of their creativity is becoming more and more urgent since their creative activity is becoming more organized and is often carried out during the course of employment by entire teams. Guarantees of such remuneration, established by legislative acts in the form of minimum rates applicable regardless of whether the author and his employer have concluded an agreement on the amount of remuneration paid to the author, are more important than ever.

In conclusion, I would like to draw attention to the close connection between certain number of industrial property objects and scientific projects. Inventions, utility models, selection achievements, topologies of integrated circuits, industrial designs, being the results of scientific, scientific-technical, artistic or design creativity, are often disclosed in scientific papers, such as dissertations, monographs, articles, etc. The authorship that led to the creation of some protected objects also leads to the creation of others. However, the latter are protected by copyright rather than industrial property law. This does not diminish the importance of scientific works and requires the formation of a regulatory framework aimed at protecting the interests of their authors, employers, and often the state, when such works are used for defense and other strategically important purposes.

REFERENCES

1. Paris Convention for the Protection of Industrial Property of 1883 // SPS “ConsultantPlus”.
2. *Pilenko A.A. Right of the inventor. M.: Statute, 2001. 688 p.*
3. Civil Code of the Russian Federation (Part Four No 230-FZ of December 18, 2006) with the Amendments and Additions of January 30, 2024 // SPS “ConsultantPlus”.

4. Protocol to the Eurasian Patent Convention on the Protection of Industrial Designs of September 9, 2019 // SPS "ConsultantPlus".
5. Law of the Republic of Armenia "On Patents" of March 30, 2021.
6. Law of the Republic of Armenia "On Industrial Design" of March 30, 2021.
7. Law of the Republic of Belarus "On Patents for Inventions, Utility Models and Industrial Designs" of December 16, 2002.
8. Patent Law of the Republic of Kazakhstan of July 16, 1999.
9. Federal Law No 456-FZ "On Amendments to Parts Two and Four of the Civil Code of the Russian Federation and Recognizing as Invalid Certain Laws (Some Provisions of Certain Laws) of the Russian Federation" of December 22, 2020 // SPS "ConsultantPlus".