

THE ANALYSIS OF THE TERM SYSTEM OF COMMERCIALIZATION OF INTELLECTUAL ACTIVITY RESULTS

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Key words and phrases: commercialization; intellectual activity results; intangible assets; intellectual property; protected and unprotected intellectual activity results.

Abstract: The article presents the analysis of the terms applied in the course of commercialization; the need for such analysis to solve the problems of legal and methodical nature of involving the so-called intangible elements of production in the economy has been proved.

In modern conditions the problem of commercialization of intellectual activity results (**IAR**) is becoming more important that is caused, on the one hand, by the increase in the role of an intellectual component in business, and on the other hand, by the restriction of the amount of the budgetary financing of the public educational institutions and the need to strengthen financial condition at the expense of research of other sources.

At the same time, the increase in the role of intellectual capital in the production process of educational organizations is explained by the need to improve the competitiveness of public institutions and the Russian economy as a whole.

Over the past decade theory and practice have made considerable progress in this direction. A large number of scientific works devoted to the problem of commercialization of the intellectual activity results have been published. The regulatory and methodical base has been improved. However, some problems and contradictions have been revealed. One of the problems that hinder the implementation of IAR commercialization and its possible solutions, in our opinion, is the imperfection of the Russian legislation on the meaningful content of the terms. Not infrequently in regulatory documents different terms are used to name similar concepts. Since various experts, including lawyers, appraisers, accountants, tax specialists, administrative workers have to deal with regulatory documents there's often confusion and misunderstanding. These circumstances strongly dictate the need to develop and put into practice standards for evaluating IAR. The terms and their explanations should be given in the

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introductory section. Moreover, these evaluation standards should be different from those which are now so that they contain methods for evaluating both in economic purposes and accounting. This document will be one of the measures to ensure a comprehensive approach to the commercialization of IAR.

To avoid different interpretations of the concepts, confusion and misunderstanding, it is necessary to correlate with each other the following terms used in legislation to indicate intangible results of scientific and technological activities: intellectual property (**IP**), the IAR, intangible assets (**IA**).

It is generally accepted for the experts in evaluating business to use the term 'intellectual property object', or 'intellectual property' borrowed from the international regulations, including the Convention Establishing the World Intellectual Property Organization.

Before coming into effect on January 1, 2008 the fourth part of Russian Federation Group the term 'intellectual property' was treated as 'an exclusive right of the citizen or legal entity to use the results of intellectual activity and similar means of individualization of the legal person, differentiation of products, works and services (trade name, trademark, service mark, etc.)' (Article 138 RF Civil Code), in other words, intellectual property includes both protected and unprotected IAR. It must be stressed that IAR was not considered as intellectual property, it included only exclusive rights to them.

With the adoption of the fourth part of RF Civil Code the difference between 'intellectual property' and 'the results of intellectual activity and means of individualization of legal entities, including goods, services and businesses, with the legal protection' (paragraph 1 of Article 1225 RF Civil Code) was eliminated. Thus, unprotected IAR and equivalent means of individualization no longer belong to the intellectual property.

Confused terminological diversity has led to the emergence of expressions such as 'the result of intellectual property' (Decision of 24 July 2009 № KG-A40/5310-09 in case number A40-72796/08-67-629).

'Intangible assets' are primarily accounting and tax term, although it is common in International Valuation Standards (in International Guidelines for the Assessment MR 4 it is called 'Valuation of Intangible Assets').

The emergence of the term 'intangible assets' in the domestic legislation is caused by the appearance of foreign participants in the Russian market; they held the registered patents and know-how which they wished to bring as a contribution to the new enterprise.

It is necessary to notice that intangible assets as object of the accounting was first mentioned in the second half of the 19th century. However, the first attempt of standard regulation of its use belongs to 1944 (Bulletin 'Amortization of intangible assets' of the Committee on Methods of accounting of the American Institute of Accountants). At first, in the system of international standard IFRS 9 'The cost of research and development' was adopted. Then in July 1998, it was replaced by IAS 38 'Intangible Assets' (current edition was entered into force on March 31, 2004). On the basis of this document the Ministry of Finance developed Accounting Regulations 14/2000.

At the same time intangible assets as a kind of property were mentioned in the 'Summary of expenses included in the cost of products (works, services) at the enterprises of the USSR', and in the letter of the Ministry of Finance of the USSR of December 29, 1990, No. 142 'On the specifics of calculating the cost of goods (works, services) of joint ventures in the USSR'.

The next legal act was a kind of practical systematic document, as it put into effect the first detailed 'Instructions on how to complete the forms of the annual financial statements of the enterprise' (approved by the letter of the Ministry of Finance on June 24, 1992, No. 48).

Paragraph 2.3 of this Instruction generally contained a list of intangible assets, which was later repeated in the new edition of Accounting Regulations. It should be noted that these instruments considered completed engineering research and development, as well as development works as intangibles assets. The criterion for their value as an independent object of registration is their utility and validity of the use in the production for a long period of time or opportunity to resale.

The next step in the evolution of the concept of 'intangible assets' was the 'The National Classification of Assets' (OK 013–94) approved by Decree of the Russian Federation Gosstandart on December 26, 1994, No. 359.

It included computer software, databases, knowledge-based production technologies and other intangible assets, which are the objects of intellectual property, the use of which is restricted to varying tenure.

Intellectual objects and the rights to them are referred to intangible assets, however they didn't mean general 'rights of use', they were more specific based on copyright and other legal contracts and agreements.

In our opinion, the most complete and modern list of intangible assets is presented in the new edition of Accounting Regulations (AR), adopted on December 27, 2007, No. 153n. In fact, this normative document replaced the previous active AR 14/2000. New AR has been used in financial statements since 2008. The first reason for the replacement of AR from January 1, 2008 related to the field of intellectual property is regulated by Section VII 'The rights to results of intellectual activity and means of individualization' of Part IV RF Civil Code. The second reason was due to the introduction of certain provisions of the International Financial Reporting Standard IFRS (IAS) 38 'Intangible assets' (Intangible Assets) into accounting practices.

In the post-Soviet period in Russia legal regulation of intellectual property and innovation was developed so as to conform to the same laws of developed countries as much as possible.

It promoted an intensification of international trade, simplification, acceleration and exchange of scientific and technical achievements, and finally positive dynamics of domestic economy. However, participation in innovative activity of the public scientific institutions and the higher educational institutions being the main source of new technical solutions was essentially limited until recently to the current legislation. These institutions, as well as all government organizations, were subject to two principles laid down in legal documents: 1) all that has been created for public funds should belong to the state, and 2) public funds cannot be used for the benefit of private enterprises without special permission from the authorities. Therefore, research institutes and universities were not allowed to use other than the budget sources of finance, they were not able to set up small businesses and freely use their patents; even if they managed to register and resell the patented innovation, they couldn't get any money as the funds were supposed to be fully allocated to the state budget.

As a result, it was difficult to switch the economy to the new innovative way of development.

In order to promote innovation in Russia Federal Law No. 217 'On Amendments to Certain Legislative Acts of the Russian Federation on the establishment of funded research and educational institutions, business entities for practical use (implementation) of the results of intellectual activity' was adopted on August 2, 2009. The adoption of this law made an exception to the rule of the second principle, that is, budgetary funds are forbidden to use for the benefit of private companies without authorization of the governing bodies.

It should be noted that the adoption of the named legal document enriched the legal framework for the commercialization of intellectual property. However, one must admit that with the improvement of the legal framework, the process of commercialization of IAR is starting to gain momentum.

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Анализ терминосистемы процесса коммерциализации результатов интеллектуальной деятельности

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Ключевые слова и фразы: интеллектуальная собственность; коммерциализация; нематериальные активы; охраняемые и неохраняемые результаты интеллектуальной деятельности; результаты интеллектуальной деятельности.

Аннотация: Проведен анализ терминов, применяемых в процессе коммерциализации, обоснована необходимость такого анализа для решения проблем нормативно-правового и методического характера вовлечения в хозяйственный оборот так называемых неосязаемых элементов производства.

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