World Bulletin of Management and Law (WBML)
Available Online at: https://www.scholarexpress.net
Volume-35, June -2024
ISSN: 2749-3601

DISPOSAL OF THE EXCLUSIVE RIGHT TO INTELLECTUAL PROPERTY OBJECTS

Kayupov Alisher Turayevich
Independent researcher

Article history:

Received: 10th May 2024
Accepted: 6th June 2024

Abstract:

In this article the concept of intellectual rights is discussed as well as the most important problems of intellectual property's transfer and the ways to solve these problems. The article is devoted to a comprehensive study of ways to transfer exclusive (intellectual property) rights. The characteristic features of licencing agreements, alienation agreements and other agreements in the field of intellectual property transfer are highlighted and described. This article is an attempt to reveal the main causes of the legislation's imperfection as a consequence of the lack of theoretical research in this area. The legal nature of the agreement on the transfer (sail) of intellectual property is determined. Substantial restrictions on the transfer of intellectual property by primary owners are proposed. A new criterion of intellectual property law theory is highlighted. The new author's classification of intellectual property contracts is given. We propose measures to improve the legal regulation of pledge in intellectual property law. The main problems of exclusive rights and authorised (share) capital and options for overcoming them are given. The practical and theoretical problems of applying commercial concession (franchising) are analysed, a new criterion of legal relations related to commercial concession is proposed. All the proposed conclusions are the result of a long scientific work and practical protection of intellectual property rights as an attorney at law.

Keywords: Intellectual property rights, exclusive rights, copyright, patent law, know-how, pledge of exclusive right, licence, licence agreements, franchise.

Intellectual property is the product of science or creativity. While science serves the benefit of humanity, creativity satisfies the spiritual and cultural needs of people. The legal institution of intellectual property is designed to protect the rights of authors and copyright holders. But bringing the results of intellectual activity to practical use is impossible without disposing of these results through agreements. In this article, we will consider the concept of intellectual property, the main types of agreements (license agreements and alienation agreements) on the disposal of exclusive rights, and also consider other (special) types of agreements on the disposal of intellectual property.

Intellectual rights and agreement on the management of intellectual property. The first normative legal act that reflected the term "intellectual property" at the international level is the Convention establishing the World Intellectual Property Organization. The definition of this term The Convention does not contain what is a legislative technique. The developers of the Convention only provide a list of what can be considered objects and what cannot. This approach does not limit the scientific community in developing a definition of intellectual property. The most important goal of the WIPO Convention was to establish an organization that would be a platform for making important legislative decisions in the field of intellectual property. It should be taken into account that the objects of intellectual property themselves are very different from each other and have many common features rather in the subjects of intellectual property than in the objects.

Combining such different areas of activity as copyright, inventions, trademarks was a very difficult task from a legal point of view. But the developers of the Convention found a solution by proposing the term "intellectual property", combining these areas of activity. Another important issue is the controversy regarding the word "property" in the term we are studying. For some inexplicable reason, the term "property" is beginning to be associated with property rights and material objects, thus drawing conclusions about the need to replace the use of this word. In our opinion, this is inappropriate and does not correspond to the general theory of law, which was reflected even in Roman law, recognizing that one can own rights, and the term property itself denotes ownership [Bredikhin 2017: 88–93], and not a material nature, as

World Bulletin of Management and Law (WBML)
Available Online at: https://www.scholarexpress.net
Volume-35, June -2024
ISSN: 2749-3601

one can conclude from a superficial analysis of the regulation of intellectual property rights.

This term emphasizes the ownership of rights and, consequently, their protection, which defines the institution of intellectual property law as a whole. It should not be forgotten that all changes adopted at the legislative level must be adopted exclusively for the purpose of protecting and safeguarding the rights of copyright holders, especially primary copyright holders. On the other hand, the term "result of intellectual activity" is less successful, since not every intellectual activity results in an object of intellectual property.

Another problem is that the absoluteness of intellectual property rights is recognized and not disputed by anyone. But the concept of absoluteness applied to rights in the field of intellectual rights is not given. We have identified two criteria of absoluteness applied to intellectual rights: 1) public-law character; 2) the ability to dispose (both the right and the material object embodying it) in accordance with one's will.

Analyzing the objects of intellectual property rights, L.B. Galperin and L.A. Mikhailova identified their common features [Galperin, Mikhailova: 37–42]. Of all the listed, the most characteristic feature is that they are the results of mental activity. All the identified features had this one common feature. Professor V.A. Dozortsev wrote that the features of various objects of intellectual property rights have only a "legal-technical nature", that is, their unification in law is an artificial device of legal technique.

We have identified a completely new, previously unexplored criterion of intellectual property rights. It consists in the fact that the legislation on intellectual property gives dominant significance to the abstract immaterial form over the material form. The object of intellectual property is an image (ideal), which gives rise to rights and obligations.

Since civil law pays more attention to property relations, the following common mistake is made. Some authors understand objects of intellectual rights as objects of exclusive rights and results of intellectual activity, in relation to which the right holder has the right to demand protection of personal non-property rights [Ruzakova: 9]. We consider this definition to be incorrect and inconsistent. Preferential rights in civil law are property rights, but in intellectual property law, personal rights facilitate the exercise of property rights.

Consequently, objects of intellectual property rights are understood as objects in connection with the creation of which a person acquires property and personal rights. We came to the conclusion that objects of intellectual property rights must be understood as objects, as a result of the creation of which the law grants the person who created such an object certain subjective property and personal rights. Intellectual property law protects the abstract form of an intellectual property object. The legislation on intellectual property attaches dominant significance to the abstract immaterial form over the material form. Any object to which an outsider gives the form of an intellectual property object of another person (copies it) is in illegal possession, violates the subjective interests (property and personal rights) of the copyright holder and public interests. The absoluteness of intellectual property rights lies in the combination of the following qualities inherent in them: 1) rights are recognized everywhere, have a public-law character; 2) the copyright holder has the right to own, use, and dispose of these rights and the material object (intellectual property object) that is embodied in the original at his own will and in his own interests.

The issue of defining intellectual rights is not new to Russian and international legal science [Bredikhin 2018a: 92–97]. However, the lack of a clear, generally accepted classification of intellectual rights is evidence that existing theoretical approaches do not reveal the essence of the concept of intellectual rights. Legislatively, rights are divided into property, personal non-property and others. In order to simplify the classification, which will not affect its accuracy, we note that rights are rather divided by their content into two groups: property and personal. It is inappropriate to indicate in personal rights that they are non-property, and all other rights can be attributed to one of these groups depending on what they contribute to.

The list of intellectual property rights is expanding due to the development of digital technologies. It can be concluded that not every fact of creating an intellectual property object grants the owner (subject) intellectual rights, but only the fact of creating such an object with which the law (national law of the state) associates the emergence of intellectual rights. The definition of intellectual rights proposed by us will be as follows: these are subjective, property and personal rights with the attributes of absoluteness, which are granted to subjects (individuals) as a result of creative activity due to the fact of creating an object with which the law associates the emergence of such rights. In addition, we have proposed a new classification of intellectual rights: 1) copyright: rights to works of literature, science and art and rights related to copyright; 2) rights in the field of industrial

World Bulletin of Management and Law (WBML)
Available Online at: https://www.scholarexpress.net
Volume-35, June -2024
ISSN: 2749-3601

property: rights to an invention, utility model, industrial design, selection achievement, the right to the topology of an integrated circuit; 3) rights in the sphere of commercial property: rights to a company name, commercial designation, trademark, name of the place of origin of goods; 4) know-how – information recognized as such by the parties under a know-how agreement, for the disclosure of which contractual sanctions are applicable. A new group of intellectual rights in the sphere of commercial property has not previously been disclosed by other authors; however, they are negotiable objects. A characteristic feature of commercial property is the impossibility of alienation of objects by the copyright holder, since this would violate public interests (in particular, the interests of consumers). Alienation of commercial property is possible only during the sale (reorganization) of a legal entity.

What agreement can be considered an agreement on the disposal of intellectual property? The answer to this question will be given by the qualifying features of this type of agreement. Since the object of transfer is intangible, the rights have a place and a period of validity. Consequently, in addition to the object, these two criteria must be specified in the agreement. Thus, the qualifying features of the transferred property right are: the object of intellectual property; the territory of validity of the right; the term of validity of the right. Exclusive rights, namely: the right of the first "release" of the object of intellectual property, the right to reproduce its copies, the right to receive financial profit from its use are also property rights by their legal nature, but only the rights to reproduce and receive profit can be transferred under the agreement. Property rights in intellectual property law are rights suitable for transfer, their circulation contributes to the implementation of the financial interests of the copyright holder, other persons according to the will of the copyright holder. We will add that the methods of disposal of intellectual rights and means of individualization should not be regulated by law, these relations of the parties should be regulated exclusively by the terms of the agreements.

As noted earlier, the qualifying features in agreements on the transfer of intellectual rights are: the object, place and time of validity of the rights. In license agreements, a special qualifying feature can be identified: the subject area of the agreement. This means that the qualifying features of a license agreement are: the territory of the agreement, the time of validity of the agreement, the subject area of the agreement.

In order to comply with the goals of the institute for the protection of intellectual property rights, it is necessary to raise the issue of confiscation of these rights, which is currently permitted by Russian legislation. It is proposed to legislatively limit the use of confiscation of exclusive rights by abolishing the confiscation of exclusive rights from primary owners, as well as abolishing the application of compulsory agreements on the disposal of intellectual property to them. The issue of buying up licenses with the aim of destroying competition is also important. The proposal to legislatively secure the right to revoke a license if the licensee fails to use the right granted within the time period specified in the agreement could help solve this problem.

Alienation of an exclusive right consists of waiving the right in favor of another person for a fee [Bredikhin 2018b: 116–119]. The legislation of Germany2, Austria3 and Switzerland4, as well as a number of other states, does not provide for the alienation of copyright; such transactions are null and void, which has never been reflected in domestic legislation [Bredikhin 2018c: 158–160]. Publishers are required to conclude only time-limited licensing agreements with authors. Such a legislative decision reflects the will of the state to take the path of protecting the rights of authors and could be a useful example for legislators of the Russian Federation. The subject of an agreement on alienation of intellectual property is the actions to legitimize the new owner, integrating the expression of will in the manner and form determined by law. An agreement on alienation of patent rights is concluded between the counterparties with the purpose of obtaining financial profit by the right holder in exchange for his waiver of ownership of property rights to the object of patent rights in favor of a certain person (the acquirer of intellectual property). Alienation of exclusive rights is realized by waiving the right in favor of another person for a fee.

Special agreements on intellectual property management. We have designated license agreements and agreements on alienation of intellectual property as the main types of agreements. The division of agreements into groups implies the division of legal regulation of individual types of agreements. In addition to the main types of agreements, we will highlight the so-called special types. Special types of agreements on intellectual property management should be understood as agreements that have special legal regulation or a special object of management. Among such agreements: an agreement on the transfer of know-how, a pledge of an exclusive right (not an independent method of intellectual property

World Bulletin of Management and Law (WBML)
Available Online at: https://www.scholarexpress.net
Volume-35, June -2024
ISSN: 2749-3601

management), the contribution of an exclusive right to the authorized capital, trust and collective management of an exclusive right, commercial concession.

We have designated know-how as a separate type of intellectual property, unique in its characteristics. This object of intellectual property has been the subject of research by many famous scientists (Stumpf, Koller). A contract for the transfer of know-how is an agreement, the subject of which are the active actions of the parties regarding the transfer of this object. The active actions of the party transferring know-how consist of transferring its disclosed content. The active actions of the receiving party are actions to keep the received information secret. A contract for the transfer of know-how has the features of a fiduciary transaction: the subject of the contract for the transfer of know-how is not the object of know-how, but the obligations of the parties. An important feature that distinguishes a contract for the transfer of know-how from other contracts for the transfer of intellectual property is the "post-contractual obligations" identified and named by the author, consisting of keeping the content of know-how secret after the expiration of the contract or its termination.

A pledge is a means of securing an obligation; from a theoretical point of view, a pledge has always been such, beginning with Roman law [Kofanov: 44–48], and remains so to this day. A pledge is not an independent type of contract in intellectual property law either. The type of contract determines the purpose of the agreement, that is, the purpose towards which the will of the parties to the agreement is directed, and the pledge acts only as a means (guarantee). The pledge of an exclusive right has been the subject of few studies in Russian civil law science [Zharova: 15–29].

A preliminary assessment of the subject of the pledge by the parties in contracts where the pledge is the right of intellectual property would be a reliable way to solve the above-mentioned problem if the contribution of the exclusive right to the authorized capital is not limited at all. A pledge in the right of intellectual property is a type of right to a right, exercised under the condition of fulfillment of the obligation by the party to the contract in order to ensure the fulfillment of the obligation of this party. In order to protect the rights and financial interests of the right holders, it is proposed to assess the subject of the pledge by the parties and record it in the contract: in the event of non-fulfillment of the obligation, the predetermined value of the subject of the pledge will not be underestimated, otherwise other property, in addition to the subject of the pledge, may be confiscated from the right holder.

In scientific literature, the contribution of an exclusive right to the authorized capital is designated as a method of disposing of the exclusive right [Kotiya: 13–24]. Given that the law does not impose any restrictions on this, we will also adhere to the opinion that this is a method of disposal. However, the formation of the authorized capital is aimed at ensuring the solvency of the future subject of entrepreneurial activity.

Contribution of an exclusive right to the authorized capital is a transaction for alienation of rights (transfer of rights under a license) to intellectual property in favor of a legal entity being created under an alienation agreement or a license agreement. The parties to the transaction for contributing an exclusive right to the authorized capital are the right holder and the legal entity. It is proposed to introduce a norm into the legislation that provides for the mandatory presence of other property in the authorized capital of a business entity in addition to exclusive rights to intellectual property. In the event of insolvency and bankruptcy of a legal entity, when collecting such an exclusive right, it is not always possible to effectively realize it for money, since this exclusive right has individual special characteristics and was valuable only for this legal entity. The expediency of adopting rules providing for the return of the exclusive right to the right holder in the event of liquidation (reorganization) of a legal entity and under other circumstances leading to a change in the status of the right holder as a participant in a legal entity has been proven.

In some scientific sources, the trust and collective management agreement are considered as one category [Cherkasheva: 13–20]. However, we note that these types of agreements are completely different, starting from the subject of the agreement and ending with the subjects and legal nature. The trust management agreement is a reliable and convenient way for the owner to step away from the management of the property, but remain the owner, essentially being only the beneficiary of the property. The practice of applying the trust management agreement for intellectual property is not widespread in the Russian Federation. The trust management agreement for intellectual rights is an agreement between the parties for a certain period, according to which the owner of the intellectual right, acting as the beneficiary, transfers to the trustee the authority to dispose of the intellectual right, and the trustee, in the interests of the beneficiary, performs legal and actual

World Bulletin of Management and Law (WBML)
Available Online at: https://www.scholarexpress.net
Volume-35, June -2024
ISSN: 2749-3601

actions with the said right, consent to which is presumed.

Conclusion.

Franchising, franchise, commercial concession are familiar concepts for entrepreneurs at the current stage of the economy in the Russian Federation. Judging by the spread of franchises in Russia, we can conclude that the legal regulation of this object is acceptable. However, it should be noted that this legal regulation is influenced to a greater extent by agreements with copyright holders [Kokben: 1-9] than directly by the civil legislation of the Russian Federation. The qualifying features of a commercial concession agreement are: transfer of intellectual property; the parties to the agreement are business entities; the agreement contains "special entrepreneurial obligations" identified and named by the author, which are understood as a certain type of contractual obligations. Commercial concession agreements contain many pre-defined obligations of the franchisee, which consist in the execution by the franchise user of the instructions of the franchise assignor. In developing the theory of commercial concession, an interpretation of special entrepreneurial obligations is proposed - these are contractual obligations between business entities that are of a personal non-property nature. Such obligations are not additional to the main ones, but continuous obligations: their observance by the franchise user entails the continuation of the agreement between the parties for the same period, non-observance - termination of the agreement. By fulfilling the instructions of the franchise assignor in a timely manner and in full, the franchise user does not violate any terms of the agreement, as a result of which the franchise assignor has no grounds to terminate the agreement with him. It is proposed to supplement the civil-law scientific turnover in terms of the term "continuing obligations", which are special entrepreneurial obligations. These obligations apply to both an individual entrepreneur and a legal entity. Previously, the obligations on which the continuation of the franchise agreement depends were not studied at the doctrinal level, but they are widespread in entrepreneurial and civil-law legal relations.

Thus, we have formulated a number of theoretical provisions reflecting the scientific growth of civil law science. Proposals for improving legislation in the field of intellectual property have been put forward for discussion by the scientific community. Without improving the legal regulation of the circulation of intellectual property objects, it is impossible to avoid the outflow of scientific and creative intellectuals from Russia. Clear, scientifically substantiated legal regulation that meets the interests of authors and copyright holders will contribute to the development of the creative and scientific potential of interested persons and the state as a whole.

REFERENCES

1. Bredihin G.P. Zashhita iskljuchitel'nyh prav avtorov: prakticheskij aspekt [Protecting the exclusive rights of authors: a practical aspect]. Vestnik Nizhegorodskogo universiteta im. N.I. Lobachevskogo [Bulletin of the Nizhny Novgorod University N.I. Lobachevsky], 2018, № 2, pp. 116–121. (In Russ.)
2. BredihinG.P. Zashhita subjektivnyh iskljuchitel'nyh prav avtorov [Protection of subjective exclusive rights of authors]. Vestnik Nizhegorodskogo universiteta im. N.I. Lobachevskogo [Bulletin of the Nizhny Novgorod University N.I. Lobachevsky], 2018, № 5, pp. 92–97. (In Russ.)
3. BredihinG.P. O sootnoshenie ponjatij sobstvennosti i vladenija v grazhdanskom prave [On the correlation of the concepts of property and ownership in civil law]. Aktual'nye problemy sovremennyh form zashhity prav i svobod cheloveka i grazhdanina: sb. nauch. st. i tezisov po materialam Mezhdunar. nauch.-prakt. konf. [Actual problems of modern forms of protection of human and civil rights and freedoms: collection of scientific articles and abstracts based on materials of the International Scientific and Practical Conference], 2017, pp. 88–93. (In Russ.)
4. Bredihin G.P. Pravovaja priroda i razvitie instituta avtorskogo prava v Rossii [Legal nature and development of the copyright institute in Russia]. Vestn. Vladim. jurid. in-ta [Bulletin of the Vladimir Law Institute], 2018, № 2 (47). pp. 157–163. (In Russ.) Gal'perin L.B., Mihajlova L.A. Intellektual'naja sobstvennost': sushh-nost' i pravovaja priroda [Intellectual Property: Essence and Legal Nature]. Sovetskoe gosudarstvo i pravo [Soviet State and Law], 1991, pp. 37–42. (In Russ.) Zharova E.V. Zalog iskljuchitel'nogo prava na rezul'tat intellektual'noj dejatel'nosti ili sredstvo individualizacii: avtoref. dis. … kand. jurid. Nauk [Pledge of the exclusive right to the result of intellectual activity or means of individualization: abstract of the dissertation

World Bulletin of Management and Law (WBML)
Available Online at: https://www.scholarexpress.net
Volume-35, June -2024
ISSN: 2749-3601

for the degree of candidate of legal sciences]. M., 2010. (In Russ.)
5. Kokbjen Ja. Franchajzing i licenzirovanie [Franchising and Licensing]. URL: https://www. wipo.int/export/sites/www/sme/ru/documents/ docs/ franchising.pdf (access date: 29.02.2020). (In Russ.)
6. Kotija S.T. Vnesenie iskljuchitel'nyh prav na rezul'taty intellektu-al'noj dejatel'nosti v kachestve vklada v ustavnyj kapital hozjajstvennogo obshhestva: avtoref. dis. … kand. jurid. nauk [Making exclusive rights to the results of intellectual activity as a contribution to the authorized capital of a business entity: abstract of the dissertation for the degree of candidate of legal sciences]. M., 2010. (In Russ.)
7. Kofanov L.L. Digesty Justiniana [Justinian Digest]. M., Statut, 2004, vol. 4, 780 p. (In Russ.)
8. Ruzakova O.A. Ruzakova O.A. Sistema dogovorov o sozdanii rezul'tatov intellektual'noj dejatel'nosti i rasporjazhenii iskljuchitel'nymi pravami: avtoref. dis. … dokt. jurid. nauk [The system of agreements on the creation of results of intellectual activity and disposal of exclusive rights: abstract of the dissertation for the degree of candidate of legal sciences]. M., 2007, pp. 9. (In Russ.)
9. Usol'ceva S.V. Rezul'taty intellektual'noj dejatel'nosti kak pravovaja kategorija: avtoref. dis. … kand. jurid. nauk [The results of intellectual activity as a legal category: abstract of the dissertation for the degree of candidate of legal sciences]. Irkutsk, 1997. (In Russ.)
10. Cherkasheva O.V. Kollektivnoe i doveritel'noe upravlenie iskljuchitel'nymi pravami: avtoref. dis. … kand. jurid. nauk [Collective and trust management of exclusive rights: abstract of the dissertation for the degree of candidate of legal sciences]. M., 2011. (In Russ.)
11. Shtumpf G. Dogovor o peredache nou-hau [Knowhow transfer agreement]. M., Progress Publ., 1976, 375 p. (In Russ.)