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TRANSFERABILITY OF RIGHTS IN THE SPHERE OF INTELLECTUAL PROPERTY

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Abstract. *In the article, the author writes about the specifics of the transferability of intellectual property objects and the rights of subjects to them, and here one should take into account not only personal non-property and exclusive rights, but also those that do not belong to any of these categories of rights.*

The author hypothesizes that the ideal nature of this object does not directly allow the results of intellectual activity and means of individualization to be negotiable, rather it is about the turnover of exclusive and other rights to them.

At the same time, it should be taken into account that exclusive rights to intellectual property objects can only be transferable from a certain moment: from the moment the object was created or from the moment legal protection was granted to the object in the form of security documents (patents, certificates). Exclusive rights can be negotiable and be the subject of relative legal relations, but before entering into circulation, exclusive rights, like personal non-property rights, are also absolute rights.

As a rule, all exclusive rights are negotiable, but exclusive rights to some means of individualization of participants in civil circulation, goods, works and services are not negotiable, and if they are negotiable, then with certain conditions. The article proposes to clarify the concepts of granting, transferring, transferring in relation to exclusive rights to objects of intellectual property. At the same time, it is necessary to pay attention to the fact that the specificity of the exclusive right lies in its content and the ability to grant and transfer it both in full and in part [1, p. 53].

Key words: *negotiability, civil circulation, granting of exclusive rights, transfer of exclusive rights, transfer of exclusive rights, copyright agreement, license agreement, introduction into circulation, copyright holder.*

ЗИЯТКЕРЛІК МЕНШІК САЛАСЫНДАҒЫ ҚҰҚЫҚТАРДЫ БЕРУ

Айжан Амангелдіқызы Амангелді

Заң ғылымдарының докторы, Д.А. Қонаев атындағы Еуразиялық заң академиясының азаматтық-құқықтық пәндер кафедрасының профессоры, М. Есболатов атындағы ҚР ПМ Алматы академиясының Ғылыми - зерттеу орталығының ғылыми қызметкері, ҚР Ғылым және жоғары білім министрлігінің ғылыми және ғылыми-техникалық қызметінің аккредиттелген сарапшысы; Қазақстан Республикасы, Алматы қ., e-mail: aizhan_amangeldy@mail.ru

Аннотация. *Мақалада автор зияткерлік меншік объектілерінің берілу ерекшеліктері мен оларға субъектілердің құқықтары туралы жазады, және бұл жерде жеке мүлдікті емес және айрықша құқықтарды ғана емес, сонымен қатар оған жатпайтындарды да ескеру қажет. құқықтардың осы санаттарының кез келгені. Автор бұл объектінің идеалды табиғаты интеллектуалдық қызмет нәтижелерінің және дараландыру құралдарының келісуге болатындығына тікелей мүмкіндік бермейді деген гипотезаны алға тартады,*

керісінше, бұл оларға қатысты ерекше және басқа құқықтардың келісілгендігі туралы. Сонымен бірге, зияткерлік меншік объектілеріне айрықша құқықтар белгілі бір сәттен бастап ғана берілуі мүмкін екенін ескерген жөн: объект құрылған сәттен немесе объектіге қорғау құжаттары түріндегі құқықтық қорғау берілген кезден бастап. (патенттер, куәліктер). Айрықша құқықтар айналымға жатады және салыстырмалы құқықтық қатынастардың нысанасы бола алады, бірақ айналымға түскенге дейін жеке мүлктік емес құқықтар сияқты айрықша құқықтар да абсолютті құқықтар болып табылады. Әдетте, барлық айрықша құқықтар келісуге жатады, бірақ азаматтық айналымға қатысушыларды, тауарларды, жұмыстарды және қызметтерді жекелендірудің кейбір құралдарына айрықша құқықтар келіссөздерге жатпайды, ал егер олар келіссөздер болса, онда белгілі бір шарттармен. Мақалада зияткерлік меншік объектілеріне айрықша құқықтарға қатысты беру, беру, беру ұғымдарын нақтылау ұсынылады. Бұл ретте айрықша құқықтың ерекшелігі оның мазмұнында және оны толықтай да, ішінара да беру және беру мүмкіндігінде екендігіне назар аудару қажет [1, 53 б.].

Түйін сөздер: айналымға қабілеттілік, азаматтық айналым, айрықша құқықтарды беру, айрықша құқықтарды беру, айрықша құқықтарды беру, авторлық шарт, лицензиялық шарт, айналымға енгізу, авторлық құқық иесі.

ОБОРОТОСПОСОБНОСТЬ ПРАВ В СФЕРЕ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ

Амангельды Айжан Амангельдықызы

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Аннотация. В статье автор пишет о специфике оборотоспособности объектов интеллектуальной собственности и прав субъектов на них, и здесь следует принять во внимание не только личные неимущественные и исключительные права, а также и те, что не относятся ни к одной из этой категорий прав.

Автором выдвинута гипотеза, что идеальная природа данного объекта не позволяет непосредственно самим результатам интеллектуальной деятельности и средствам индивидуализации быть оборотоспособными, скорее речь идет об оборотоспособности исключительных и иных прав на них.

При этом стоит принять во внимание, что исключительные права на объекты интеллектуальной собственности только с определенного момента могут быть оборотоспособны: с момента факта создания объекта или с момента предоставления правовой охраны объекту в виде охраняемых документов (патента, свидетельства). Исключительные права могут быть оборотоспособными и быть предметом относительных правоотношений, но до вступления в оборот исключительные права, как и личные неимущественные права, являются также абсолютными правами.

Как правило все исключительные права оборотоспособны, но исключительные права на некоторые средства индивидуализации участников гражданского оборота, товаров, работ и услуг не оборотоспособны, а если и оборотоспособны, то с определенными условиями. В статье предлагается уточнить понятия предоставление, передача, переход по отношению к исключительным правам на объекты интеллектуальной собственности. При этом необходимо обратить внимание на то, что специфика исключительного права состоит в его содержании и возможности предоставлять и передавать его как полностью, так и частично [1, С. 53].

Ключевые слова: оборотоспособность, гражданский оборот, предоставление исключительных прав, передача исключительных прав, переход исключительных прав, авторский договор, лицензионный договор, введение в оборот, правообладатель.

Introduction

Objects of intellectual property rights have firmly taken their place in civil circulation, exclusive rights to them are absolute and can be the subject of transactions. Their importance is becoming more and more relevant every day due to the processes of widespread introduction of technologies in almost all areas of public relations, the creation of “smart” cities in Kazakhstan, and the commercialization of the results of creative activity. The issues of transferability of intellectual property objects and exclusive rights to them have always aroused scientific interest.

Materials and Methods

The article was prepared using general and particular methods of scientific knowledge: dialectical, formal-logical, systemic, comparative-legal, technical-legal, etc. During the study, the works of Ukrainian and Russian scientists on civil law issues were studied, as well as the legislation of the Republic of Kazakhstan.

Results and discussion

There is no clear definition of negotiability in the legislation of the Republic of Kazakhstan. According to paragraph 1 of Art. 116 of the Civil Code (hereinafter referred to as the Civil Code) of the Republic of Kazakhstan, objects of civil rights can be freely alienated or transferred from one person to another in the order of universal succession (inheritance, reorganization of a legal entity) or in another way, if they are not withdrawn from circulation or are not limited in circulation¹. From this it follows that negotiability lies in the possibility of alienation or transfer of the object of rights from one person to another on various grounds, which characterizes the dynamics of legal relations.

S.A. Slipchenko, studying the turnover of objects of personal non-property rights, writes that the turnover of objects of civil law indicates their ability to participate in processes leading to the dynamics of civil legal relations, and not only in static relations, that is, belonging and alienation [2, p. 69].

As you know, there are two types of rights to

objects of intellectual property rights: personal non-property rights and exclusive rights (which are one of the types of property rights).

According to S.A. Slipchenko, that there is no doubt that the results of creative intellectual property are inalienable due to their natural properties. Therefore, it seems inappropriate to establish the degree of civil negotiability [1, p. 72-73]. The author refers to Part 4 of Art. 129 of the Civil Code of the Russian Federation, which states that the results of intellectual activity and means of individualization equated to them (Article 1225) cannot be alienated or otherwise transferred from one person to another². In this sense, the position of S.A. Slipchenko is interesting in that the author divides objects that are incapable of turnover due to their inalienability from the subject, and objects that are capable of free circulation, that is, detachable. According to the author, in order to establish or determine the ability of objects of civil law to participate in civil circulation, it is necessary to first determine their natural properties, that is, to establish whether they are separable from the subject, whether they have a natural turnover [2, p. 73-74].

There are no such restrictions in the legislation of Kazakhstan regarding the circulation of the results of creative intellectual property. P. 2 Art. 116 of the Civil Code of the Republic of Kazakhstan contains that the types of property, the alienation of which is not allowed (withdrawn from circulation), must be directly indicated in the laws³. And the results of creative intellectual activity do not belong to this category, but for some means of individualization, prohibitions and restrictions on turnover are provided, for example, in paragraph 1 of Art. 21 of the Law of the Republic of Kazakhstan “On Trademarks” states that the transfer of the exclusive right to a trademark is not allowed if it may cause misleading about the product or its manufacturer, further in paragraph 4 of Art. 37 of the Law of the Republic of Kazakhstan “On Trademarks” states that alienation, other transactions on the assignment of the right to use a geographical indication and an appellation of origin of goods and the granting of the right to use a geographical indication and an appellation

¹ Civil Code of the Republic of Kazakhstan (General Part), adopted by the Supreme Council of the Republic of Kazakhstan on December 27, 1994 // https://online.zakon.kz/Document/?doc_id=1017157#activate_doc=2 Date of application 07.11.2022

² Civil Code of the Russian Federation (Civil Code of the Russian Federation) of November 30, 1994 N 51-FZ // http://www.consultant.ru/document/cons_doc_LAW_5142/a761099a7fed45b3a1ad93f103041dec5d760a72/. Date of application 07.11.2022

³ Civil Code of the Russian Federation (Civil Code of the Russian Federation) of November 30, 1994 N 51-FZ // http://www.consultant.ru/document/cons_doc_LAW_5142/a761099a7fed45b3a1ad93f103041dec5d760a72/. Date of application 07.11.2022

of origin on the basis of a license agreement are not allowed. Considering the ideal nature of this object, it cannot be said that the result of intellectual activity itself is transferable, rather it is about the transferability of exclusive rights.

The question is from what moment these rights arise, otherwise if there are no rights, since it is required to fix the ownership of intellectual property objects by a certain subject, then there is no transferability object. In accordance with Art. 962 of the Civil Code of the Republic of Kazakhstan, rights to objects of intellectual property arise by virtue of the fact of their creation or as a result of the provision of legal protection by an authorized state body in cases and in the manner provided for by the Civil Code of the Republic of Kazakhstan and other legislative acts. For example, in accordance with Art. 9 and 35 of the Law of the Republic of Kazakhstan dated June 10, 1996 No. 6-I "On Copyright and Related Rights" (hereinafter referred to as the Law of the Republic of Kazakhstan On Copyright), copyright in a work of science, literature and art arises by virtue of the fact of its creation, for the emergence and exercise of copyright registration of the work, other special design of the work or compliance with any formalities is not required, copyright in a work of science, literature and art arises by virtue of the fact of its creation. For the emergence and exercise of related rights, no formalities are required either.

Exclusive rights to trademarks in accordance with Art. 4 of the Law of the Republic of Kazakhstan dated July 26, 1999 No. 456-I "On Trademarks, Service Marks, Geographical Indications and Appellations of Origin of Goods" (hereinafter - LRK "On Trademarks") arise from the date of registration of a trademark in the State Register of Trademarks. In accordance with Art. 37 of the Law of the Republic of Kazakhstan "On Trademarks", the owner of the right to use a geographical indication and an appellation of origin of goods has the right to use them. The right to use a geographical indication and an appellation of origin arises from its owner from the date of registration of the right to use them in the State Register of Geographical Indications and the State Register of Appellations of Origin⁴.

As for the objects of patent law, in accordance with Art. 5 of the Patent Law of the Republic of Kazakhstan, a patent for objects of patent law is valid from the date of filing an application with an expert organization in case of receiving a title of protection and registration in the relevant state register in accordance with Art. 25 of the Patent Law of the Republic of Kazakhstan⁵.

According to Art. 3 of the Law of the Republic of Kazakhstan dated July 13, 1999 No. 422-I "On the Protection of Breeding Achievements" (hereinafter referred to as the Law of Kazakhstan "On the Protection of Breeding Achievements"), a patent for plant varieties and animal breeds is valid from the date of filing an application with an expert organization in case of receiving a title of protection and registration in the relevant state register⁶.

As provided in Art. 13 of the Law of the Republic of Kazakhstan dated June 29, 2001 No. 217-II "On the legal protection of topologies of integrated circuits" (hereinafter - LRK "On TIMS"), the exclusive right to a topology is valid from the date of its registration of the topology or from the documented date of the first use in any country of the world of this topology or an integrated circuit with this topology⁷.

Thus, exclusive rights to intellectual property objects can only be transferable from a certain moment: from the moment of the fact of the creation of the object or from the moment of granting legal protection to the object in the form of titles of protection (patents, certificates). This indicates the specificity of the transferability of these rights. Personal non-property rights to the results of intellectual creative activity are not granted, transferred or transferred, not alienated, they belong only to an individual whose creative work created this or that object, i.e. author, inventor, breeder, i.e. these rights are non-transferable in accordance with Art. 963 of the Civil Code of the Republic of Kazakhstan. And this may characterize personal non-property rights and are absolute.

Due to the fact that exclusive rights can be negotiable and act as the subject of relative legal relations, however, before entering into circulation, exclusive rights, like personal non-property rights, are also absolute rights.

⁴ Law of the Republic of Kazakhstan on trademarks, service marks and appellations of origin dated July 26, 1999, № 456-I // https://online.zakon.kz/Document/?doc_id=1033141#activate_doc=2. Date of application 07.11.2022

⁵ Patent Law of the Republic of Kazakhstan (July 16, 1999, № 427-I) // https://online.zakon.kz/Document/?doc_id=1032064#activate_doc=2. Date of application

⁶ Law of the Republic of Kazakhstan on the protection of selection achievements dated July 13, 1999, № 422-I // https://online.zakon.kz/Document/?doc_id=1033151#activate_doc=2. Date of application 07.11.2022

⁷ Law of the Republic of Kazakhstan dated June 29, 2001 No. 217-II "On the legal protection of topologies of integrated circuits" // https://online.zakon.kz/Document/?doc_id=1023841&sub_id=130000&pos=167;-37#pos=167 Date of application 07.11.2022

As a rule, exclusive rights are negotiable, although there are exceptions. In this regard, it is necessary to deal with the concepts of granting, transferring, transferring in relation to exclusive rights to objects of intellectual property. In accordance with paragraph 1 of Art. 965 of the Civil Code of the Republic of Kazakhstan, exclusive rights to an object of intellectual property, unless otherwise provided by this Code or other legislative acts, may be transferred by their right holder in whole or in part under an agreement to another person, and also pass in the order of universal succession by inheritance and as a result of the reorganization of a legal entity - copyright holder⁸.

According to paragraph 1 of Art. 30 of the Law of the Republic of Kazakhstan On Copyright, copyrights are transferred under copyright agreements and in the order of inheritance⁹.

In accordance with paragraph 1 of Art. 31 of the Law of the Republic of Kazakhstan On Copyright, the property rights of the author specified in Article 16 of the Law may be assigned in whole or in part, and may also be transferred for use under an author's agreement on the transfer of exclusive rights or under an author's agreement on the transfer of non-exclusive rights¹⁰.

According to paragraph 1 of Art. 11-1 of the Patent Law of the Republic of Kazakhstan, the patent owner has the right to transfer his exclusive right to an object of industrial property to another individual or legal entity under an assignment agreement¹¹. The right to use an industrial property object is granted on the basis of a license agreement. According to Art. 16 of the Law "On the Protection of Selection Achievements" the right to apply for and obtain a patent for a selection achievement, the exclusive right to use a selection achievement, as well as to remuneration and income from its use are inherited or by succession¹².

As follows from the content of Art. 18 of the Law "On the Protection of Selection Achievements" granting the right to use a selection achievement is carried out on the basis of a

license agreement. According to Art. 8 of the Law of the Republic of Kazakhstan on TIMS, the exclusive right to a topology can be transferred in whole or in part to another person under an agreement, and also passes in the order of universal succession by inheritance and as a result of the reorganization of a legal entity - the right holder. Under a license agreement, the copyright holder (licensor) grants the other party (licensee) the right to temporarily use the topology in a certain way¹³.

In accordance with paragraph 1 of Art. 21 of the Law of the Republic of Kazakhstan "On Trademarks", the exclusive right to a trademark in respect of all goods (services) or part thereof may be transferred under an assignment agreement. The transfer of the exclusive right to a trademark is not allowed if it may cause misleading about the product or its manufacturer¹⁴.

It is obvious that in the legislation of the Republic of Kazakhstan there is no single approach to the concepts of "presentation", "transfer", "transition". Thus, the provision should be understood as the conclusion of a license agreement or other mixed agreement, according to which, for a certain period, the right to use is fully or partially granted to the licensee, while the exclusive right is retained by the licensor, i.e. the right holder is the licensor, and depending on the type of license (license agreement), the right holder retains or does not retain the right to use his intellectual property object simultaneously with the licensee, i.e. this is a feature of contracts for the granting of the right to use. And the transfer should be understood as the change of the right holder in whole or in part, that is, the alienation of exclusive rights on the basis of an assignment agreement or other mixed agreement, under which the change of the right holder takes place in whole or in part. Transition means both in the theory of civil law and in legislation the inheritance of rights, incl. exclusive right.

In the legal literature they write that the transfer of the property of a deceased citizen in the order of succession to other persons

⁸ Civil Code of the Republic of Kazakhstan (Special part) (1 July, 1999, № 409-1, has been amended by the 2012) // https://online.zakon.kz/Document/?doc_id=1049893#activate_doc=2 7 Дата обращения 07.11.2022

⁹ Law of the Republic of Kazakhstan dated June 10, 1996 No. 6-1 "On Copyright and Related Rights" // https://online.zakon.kz/Document/?doc_id=1005798&pos=486;-56#pos=486;-56. Date of application 07.11.2022

¹⁰ There

¹¹ Patent Law of the Republic of Kazakhstan (July 16, 1999, № 427-1) // https://online.zakon.kz/Document/?doc_id=1032064#activate_doc=2. Date of application 07.11.2022

¹² Law of the Republic of Kazakhstan on the protection of selection achievements dated July 13, 1999, № 422-1 // https://online.zakon.kz/Document/?doc_id=1033151#activate_doc=2. Date of application 07.11.2022

¹³ Law of the Republic of Kazakhstan dated June 29, 2001 No. 217-II "On the legal protection of topologies of integrated circuits" // https://online.zakon.kz/Document/?doc_id=1023841&sub_id=130000&pos=167;-37#pos=167 Date of application 07.11.2022

¹⁴ Law of the Republic of Kazakhstan on trademarks, service marks and appellations of origin dated July 26, 1999, № 456-1 // https://online.zakon.kz/Document/?doc_id=1033141#activate_doc=2. Date of application 07.11.2022

means that in the remaining legal relations the subject of rights to property is replaced, while the rights and obligations of the successor (heir) legally depend on the rights and obligations of the predecessor (testator) [3, p. 14].

At the same time, it is not clear whether exclusive rights are transferred in full or in part during inheritance. Thus, the granting and transfer of exclusive rights mean contractual methods of transferability, and the transfer of an exclusive right can mean a change in the right holder by a transaction (testament) or by law. Inconsistencies also take place in terms of license and copyright agreements. According to Art. 966 of the Civil Code of the Republic of Kazakhstan, under a license agreement, the party that has the exclusive right to the result of intellectual creative activity or to the means of individualization (the licensor) grants the other party (the licensee) the right to temporarily use the corresponding object of intellectual property in a certain way. In accordance with paragraphs. 5) art. 1 of the Law on Copyright, an author's agreement is an agreement, the subject of which is the transfer of property rights to the use of one or more objects of copyright. The author's agreement is a kind of license agreement¹⁵.

An author's agreement is an agreement on the use of a work of science, literature and art, concluded by a co-author or his successors, as a result of which, for a fee, exclusive rights to works are granted, the provision of which is not prohibited by law [4, p. 66]. The confusion in the Law of the Republic of Kazakhstan On Copyright is that if the author's agreement refers to a type of license agreement, then the term provision should be used, but the legislator in the Law of the Republic of Kazakhstan On Copyright did not take into account the changes that were introduced in 2018. In this regard, we consider it necessary to amend the provisions of the Law of the Republic of Kazakhstan On Copyright regarding the concept of an author's contract. In turn, the term "transfer" in the Law of the Republic of Kazakhstan On Copyright should be applied to an assignment agreement, that is, the alienation of an exclusive right, in which there is a change in the owner of exclusive rights in whole or in part. At the same time, it is necessary to pay attention to the fact that the specificity of exclusive rights

lies in its content. The content of the powers of exclusive rights depends on the object of intellectual property. So, according to paragraphs. 1, paragraphs. 9 st. 1 of the Law of the Republic of Kazakhstan "On Trademarks" exclusive right - the owner's property right to use a trademark or an appellation of origin of goods in any way at his discretion; the use of a trademark, geographical indication and appellation of origin means the placement of a trademark, geographical indication and appellation of origin on goods and in the provision of services for which they are protected, on their packaging, production, use, import, storage, offer for sale, sale of goods with a trademark, geographical indication and appellation of origin of goods, use in signboards, advertising, printed materials or other business documentation, as well as other introduction of them into circulation¹⁶.

According to paragraph 2 of Art. 19 of the Law of Kazakhstan "On Trademarks", proof of the use of a trademark is considered to be its use on the goods for which it is registered and (or) their packaging by the owner of the trademark or a person to whom such a right has been transferred or granted on the basis of an agreement in accordance with paragraphs 1 and 2 Article 21 of the Law of the Republic of Kazakhstan "On Trademarks". The use of a trademark may be recognized as the manufacture, importation, storage, offer for sale, sale of goods bearing the trademark, its use in advertising, signboards, printed publications, on official forms, in other business documentation, as well as in a domain name, transfer of the right to trademark, including when demonstrating goods at exhibitions held in the Republic of Kazakhstan, as well as other introduction of it into circulation¹⁷.

Considering further the issue of the powers of the exclusive right to selection achievements, according to Art. 14 of the Law of the Republic of Kazakhstan "On the Protection of Selection Achievements", the patent holder has the exclusive right to use the selection achievement, if such use does not violate the rights of other patent holders. The permission of the patent owner is required for the following actions in relation to a selection achievement: production or reproduction (multiplication); bringing seeds to sowing conditions for propagation purposes; offer for sale; sale or other types of sale; export from the territory of the Republic

¹⁵ Law of the Republic of Kazakhstan dated June 10, 1996 No. 6-1 "On Copyright and Related Rights" // https://online.zakon.kz/Document/?doc_id=1005798&pos=486;-56#pos=486;-56. Date of application 07.11.2022

¹⁶ Law of the Republic of Kazakhstan on trademarks, service marks and appellations of origin dated July 26, 1999, № 456-1 // https://online.zakon.kz/Document/?doc_id=1033141#activate_doc=2. Date of application 07.11.2022

¹⁷ -There.

of Kazakhstan; import into the territory of the Republic of Kazakhstan; storage for the above purposes. The right of the patent holder also extends to plant material, marketable animals that were produced from seeds, from breeding animals, introduced into civil circulation without the permission of the patent holder. The exclusive right of the patent owner applies to seeds of a variety and breeding material of a breed of selection achievements that: 1) substantially inherit the characteristics of the selection achievements, unless these selection achievements themselves inherit the characteristics of another selection achievement; 2) do not clearly differ from the selection achievement; 3) the reproduction of which requires the repeated use of a selection achievement¹⁸.

The legislation of the Republic of Kazakhstan also provides for provisions regarding objects of related rights. According to Art. 37 of the Law of the Republic of Kazakhstan On Copyright, the exclusive rights of a performer to use a performance or production mean the right to allow or prohibit the following actions: to record a previously unrecorded performance or production; reproduce directly or indirectly a recording of a performance or production in any form; broadcast, communicate to the public by cable, or communicate to the public a performance or production without using a recording of the performance or production; to broadcast, communicate to the public by cable, or make available to the public a recording of a performance or production; to rent (lease) a phonogram published for commercial purposes, on which a performance or production with the participation of the performer is recorded. This right, when concluding a contract for recording a performance on a phonogram, shall pass to the producer of the phonogram. At the same time, the performer retains the right to remuneration for renting (renting) copies of such a phonogram¹⁹.

In accordance with Art. 38 of the Law of the Republic of Kazakhstan On Copyright, exclusive rights to use a phonogram mean the right to exercise, permit or prohibit the following actions: reproduce the phonogram directly and indirectly and in any form; distribute the original and copies of the phonogram, including imports, through sale or other transfer of

ownership; rent a phonogram (rent) even after its distribution, carried out by the producer of the phonogram or with his permission; alter or in any way process the phonogram; bring the phonogram to the public. According to Art. 40 of the Law of the Republic of Kazakhstan On the Copyright of an on-air and (or) cable broadcasting organization in relation to its transmission has exclusive rights to use in any form and give permission to use the transmission, including the right to receive remuneration for granting such permission. Exclusive rights to use a broadcast mean the right to carry out, allow or prohibit the following actions: broadcast the broadcast; communicate the program to the public by cable or broadcast the program; record transmission; play a recording of the program; communicate the program to the public in places with a paid entrance; bring a message to the public²⁰.

According to Art. 1 ZRK "On TIMS" the exclusive right to a topology is the property right of the right holder to use the topology in any way at its discretion, and the use of the topology means the use, importation, offer for sale, sale or other introduction of the topology, an integrated circuit with this topology or a product that includes such an integrated circuit, into civil circulation, carried out for commercial purposes. Thus, it is necessary to understand the essence and content of the exclusive right (scope of authority) to a particular intellectual property object, since the terms of the contract, transactions in accordance with which exclusive rights are granted, transferred or transferred depend on this. It should be noted that according to Art. 964, 965 of the Civil Code of the Republic of Kazakhstan, it is possible to transfer, grant or transfer in whole or in part, which once again emphasizes the specifics of the tradability of exclusive rights to intellectual property. Unlike the right of ownership (one of the rights in rem), which is indefinite, exclusive rights to objects of intellectual property are valid for a certain time, that is, they are of an urgent nature. In accordance with Art. 28 of the Law of the Republic of Kazakhstan On Copyright, copyright is valid throughout the life of the author and seventy years after his death²¹.

In accordance with Art. 42 of the Law of the Republic of Kazakhstan On Copyright Law,

¹⁸ Law of the Republic of Kazakhstan on the protection of selection achievements dated July 13, 1999, № 422-І // https://online.zakon.kz/Document/?doc_id=1033151#activate_doc=2. Date of application 07.11.2022

¹⁹ Law of the Republic of Kazakhstan dated June 10, 1996 No. 6-І "On Copyright and Related Rights" // https://online.zakon.kz/Document/?doc_id=1005798&pos=486;-56#pos=486;-56. Date of application 07.11.2022

²⁰ There.

²¹ There.

the exclusive rights of the performer are valid for seventy years after the first performance or staging. The exclusive rights of the producer of a phonogram are valid for seventy years after the first publication of the phonogram or for seventy years after its first recording, if the phonogram was not published within this period. The exclusive rights of a broadcasting organization shall be valid for seventy years after the first broadcast by such an organization. The exclusive rights of a cable broadcasting organization shall be valid for seventy years after the first communication to the public by such organization by cable.²²

According to Art. 15 of the Law of the Republic of Kazakhstan "On Trademarks" the registration of a trademark is valid for ten years from the date of filing the application, the validity of the registration of a trademark is extended each time for ten years at the request of the owner, filed during the last year of its validity. According to Art. 34 "On Trademarks" registration: 1) a geographical indication is valid indefinitely, subject to the preservation of a certain quality, reputation or other characteristics of the product, which are largely related to its geographical origin; 2) the appellation of origin of the goods is valid indefinitely, provided that the special properties of the goods produced in the territory of the specified geographical object are preserved. The right to use a geographical indication and an appellation of origin is valid for ten years from the date of filing an application with an expert organization²³.

According to Art. 5 of the Patent Law of the Republic of Kazakhstan, a patent for an invention is valid for twenty years from the date of filing the application. A utility model patent is valid for five years from the filing date of the application. Its validity may be extended at the request of the patent holder, but not more than for three years. A patent for an industrial design is valid for ten years from the date of filing the application. Its validity can be extended every time at the request of the patent owner for five years. In this case, the total duration of the patent should not exceed twenty-five years from the date of filing the application²⁴.

According to Art. 13 ZRK "On TIRMS" the exclusive right to the topology is valid for ten years, starting from the date of registration of the topology. If the registration of the topology was not carried out, the specified ten-year period is calculated from the documented date of the first use in any country of the world of this topology or an integrated circuit with this topology²⁵. Needless to say, for such an object, the term of protection is too long. According to Art. 3 of the Law of the Republic of Kazakhstan "On the Protection of Selection Achievements", a patent certifies the exclusive right of the patent holder to use the selection achievement. The validity period of a patent for plant varieties is 25 years, for animal breeds - 30 years, for varieties of grapes, ornamental tree, fruit and forest crops, including their rootstocks, is 35 years from the date of filing an application with an expert organization. The term of a patent may be extended at the request of the patent owner, taking into account the payment made for each year of renewal, but not more than ten years.²⁶

Thus, exclusive rights have their own period of validity, provided for in the legislation of the Republic of Kazakhstan and, therefore, can only be negotiable for a certain time. It is reflected that the classical understanding of the turnover of objects of intellectual property implies a combination of turnover of rights and tangible carriers [5, p. 24]. According to M.A. Astakhova, turnover of rights to the protected results of intellectual activity is a process of transfer of negotiable rights implemented within the grounds and methods directly provided by law or not prohibited by it, due to which there is a permanent or temporary change of right holders. The structural elements of the process under consideration are: rights to the protected results of intellectual activity - objects of turnover; persons, whose volitional actions lead to the transfer of rights - subjects of turnover; a set of volitional actions, The set of volitional actions resulting in the transfer of rights - the mechanism of turnover [6, p. 8].

Conclusion

Thus, when considering the issue of the transferability of exclusive rights, one should

²² There.

²³ Law of the Republic of Kazakhstan on trademarks, service marks and appellations of origin dated July 26, 1999, № 456-III // https://online.zakon.kz/Document/?doc_id=1033141#activate_doc=2. Date of application 07.11.2022

²⁴ Patent Law of the Republic of Kazakhstan (July 16, 1999, № 427-I) // https://online.zakon.kz/Document/?doc_id=1032064#activate_doc=2. Date of application 07.11.2022

²⁵ Law of the Republic of Kazakhstan dated June 29, 2001 No. 217-II "On the legal protection of topologies of integrated circuits" // https://online.zakon.kz/Document/?doc_id=1023841&sub_id=130000&pos=167;-37#pos=167. Date of application 07.11.2022

²⁶ Law of the Republic of Kazakhstan on the protection of selection achievements dated July 13, 1999, № 422-I // https://online.zakon.kz/Document/?doc_id=1033151#activate_doc=2. Date of application 07.11.2022

take into account the specifics of these rights: the moment of introduction into civil circulation, the content of the exclusive right, the divisibility of the exclusive right, the limitation of exclusive rights by the terms and territory of validity, and also by the fact that not all exclusive rights are transferable, and if they are negotiable, then with certain conditions. All these features once again

emphasize the specifics of the transferability of rights to objects of intellectual activity, their difference from other rights. Obviously, the legislator himself is not always able to achieve a uniform application of terms in relation to objects of intellectual property, since there are still certain inconsistencies and confusion in certain provisions of regulatory legal acts.

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