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## INTERACTION OF INTELLECTUAL PROPERTY LAW WITH CERTAIN BRANCHES OF PUBLIC LAW

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**Abstract.** The article analyzes the norms of public law that regulate certain aspects related to intellectual property. Intellectual property law, being a sub-branch of civil law, includes not only the norms of private law, but also the norms of public law, i.e. is a complex branch of legislation. Relations, in particular, relating to the provision of legal protection for claimed inventions, utility models, industrial designs, trademarks, service marks, appellations of origin, breeding achievements (plant varieties and animal breeds) by the expert organization of the authorized body, are regulated by the norms of the administrative legislation of the Republic of Kazakhstan, based on imperatives. Moreover, persons who are denied the grant of a title of protection in the form of a patent or certificate for a particular declared object can file obligatory pre-trial objections with the Appeal Board under the Ministry of Justice of the Republic of Kazakhstan and only then can apply to the court with a claim to appeal the decision of the expert organization, which refused to recognize the declared objects as objects of intellectual property. And these relations are regulated by the norms of administrative procedural legislation. The right of intellectual property is also regulated by the norms of tax, customs legislation. Thus, the intellectual property right in content is a sub-branch of civil law, because has the same subject, the method of legal regulation, and in terms of form, intellectual property law is a complex branch of legislation, because includes both private and public law.

**Keywords:** intellectual property law, complex branch of legislation, public law norms.

## ЗИЯТКЕРЛІК МЕНШІК ҚҰҚЫҒЫНЫҢ КЕЙБІР ЖАРИЯ ҚҰҚЫҚ САЛАЛАРЫМЕН ӨЗАРА ӘРЕКЕТТЕСУІ

**Айжан Амангелдіқызы Амангелді**

*Заң ғылымдарының докторы, Д.А. Қонаев атындағы Еуразиялық заң академиясының азаматтық-құқықтық пәндер кафедрасының профессоры, М. Есболатов атындағы ҚР ІІМ 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 зияткерлік меншіктің қандай да бір аспектілерін реттейтін жария құқық нормалары талданған. Зияткерлік меншік құқығы азаматтық құқықтың кіші саласы бола тұра, жеке құқықтың нормаларынан ғана емес, сондай-ақ жария құқықтың нормаларынан тұрады, яғни заңнаманың кеешенді саласы болып табылады. Атап айтқанда жарияланған өнертабысқа, пайдалы модельге, өнеркәсіптік үлгіге, тауар таңбасына, қызмет көрсету белгісіне, тауарлар шығарылған жердің атауына, селекциялық жетістіктерге (өсімдіктер сұрпына және жануарлардың тұқымына) уәкілетті органның сараптама ұйымы тарапынан құқықтық қорғау беруге қатысты қатынастар императивтік бастамаларға негізделген ҚР әкімшілік заңнамасының нормаларымен реттеледі. Сонымен қатар қандай да бір жарияланған объектіге патент немесе куәлік түріндегі қорғау құжатын беруден бас тартылған тұлғалар міндетті сотқа дейінгі тәртіпте ҚР Әділет министрлігінің Апелляциялық кеңесіне қарсылық бере алады және осыдан кейін ғана сотқа жарияланған объектіні зияткерлік меншік объектісі ретінде танудан бас тартқан сараптама ұйымының шешімін даулау туралы талаппен жүгіне алады. Бұл қатынастар да

әкімшілік процедуралық-процестік заңнамасының нормаларымен реттеледі. Зияткерлік меншік құқығы сондай-ақ салық, кеден заңнамасының нормаларымен реттеледі. Сонымен зияткерлік меншік құқығы өзінің мазмұны бойынша азаматтық құқықтың кіші саласы болып табылады, өйткені құқықтық реттеудің сол пәніне, әдісіне ие, ал нысаны бойынша зияткерлік меншік құқығы кешенді заңнама саласы болып табылады, өйткені ол жеке, сондай-ақ жария заңнаманың нормаларынан тұрады.

**Түйін сөздер:** зияткерлік меншік құқығы, заңнаманың күрделі саласы, жария құқық нормалары.

## ВЗАИМОДЕЙСТВИЕ ПРАВА ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ С НЕКОТОРЫМИ ОТРАСЛЯМИ ПУБЛИЧНОГО ПРАВА

**Амангельды Айжан Амангельдықызы**

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**Аннотация.** В статье проанализированы нормы публичного права, регулирующие те или иные аспекты, касающиеся интеллектуальной собственности. Право интеллектуальной собственности, являясь подотраслью гражданского права, включает в себя не только нормы частного права, но и нормы публичного права, т.е. является комплексной отраслью законодательства. Отношения, в частности, касающиеся предоставления правовой охраны заявленным изобретениям, полезным моделям, промышленным образцам, товарным знакам, знакам обслуживания, наименованиям мест происхождения, селекционным достижениям (сортам растений и породам животных) со стороны экспертной организации уполномоченного органа, регулируются нормами административного законодательства РК, основанных на императивных началах. Более того, лица, которым отказано в предоставлении охранного документа в виде патента или свидетельства на тот или иной заявленный объект могут подать в обязательном досудебном порядке в Апелляционный совет при Министерстве юстиции РК возражения и только затем могут обратиться в суд с иском об обжаловании решения экспертной организации, отказавшей в признании заявленных объектов в качестве объектов интеллектуальной собственности. И эти отношения регулируются нормами административного процедурно-процессуального законодательства. Право интеллектуальной собственности также регулируется нормами налогового, таможенного законодательства. Таким образом, право интеллектуальной собственности по содержанию является подотраслью гражданского права, т.к. имеет один и тот же предмет, метод правового регулирования, а по форме право интеллектуальной собственности является комплексной отраслью законодательства, т.к. включает в себя нормы и частного, и публичного законодательства.

**Ключевые слова:** право интеллектуальной собственности, комплексная отрасль законодательства, нормы публичного права.

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### Introduction

The division of legal fields is carried out on the basis of two dimensions: the subject of legal regulation and the method of legal regulation. At the same time, not a single field of law takes place on its own, legal norms are closely related to each other. Intellectual property law is not exempt from this situation,

it is interconnected with other areas of law, providing legal regulation of social relations within the framework of creative intellectual activity.

Intellectual property rights are interconnected with civil rights. According to L.V. Shcherbacheva, the relationship and interrelationship between civil law and its sub-field, intellectual law, can

be observed from the extensive legal relations in the system. In civil law, these are property relations, other material legal relations, etc., and in intellectual law, these are copyright legal relations within the scope of science, literature and art, inventiveness, selective achievement, and many others. Relations and sub-fields of intellectual property are listed in Article 1227 of the RF Civil Code [1, p. 14-15]. The analysis of legal relations regulated by the field of civil law and the subfield of intellectual law allows us to conclude that it is impossible to determine a significant difference between their subjects [1, p. 17].

The subject of civil law and intellectual law is property relations and personal non-property relations, and the method of civil law and intellectual law is dispositive and imperative methods. It is possible to agree with L.V. Shcherbacheva's conclusion and, accordingly, it is necessary to recognize the right of intellectual property as a minor part of the civil right.

In my works, we have written about this several times and have followed this point of view [2; 3]. Intellectual property right is a sub-field of civil law, and its subject is property and personal non-property relations, which arise between the subjects of the realization of said relations arising in connection with the creation and use of intellectual property objects. In most cases, the dispositive method is used as a method of legal regulation of these relations, but in general, the use of the imperative method is not excluded [4]. As L.V. Shcherbacheva rightly pointed out, the principle of dispositivity in intellectual law also occurs in imperative norms related to permissive regulation characteristic of civil law and its sub-field under study, since intellectual relations are closely related to the individual, they touch the deep foundations of human thought and creativity, and the state provides them with interference should be strictly limited [1, p. 23].

Also, the interrelationship between civil law and intellectual property rights is reflected in the fact that the exclusive right to intellectual property objects as a subjective property right is one of the civil legal objects. Article 116 of the Civil Code of the Republic of Kazakhstan was amended by the Law of the Republic of Kazakhstan No. 49-VI of February 27, 2017 "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Improvement of Civil, Banking Legislation and Improvement of Conditions for Entrepreneurial Activity", according to which "item " was replaced by the term "property", which, of course, is very important from a

theoretical and practical point of view, because both property rights and exclusive rights to intellectual property objects were recognized as negotiable.

At the same time, in accordance with Article 14 of the Civil Code of the Republic of Kazakhstan, a citizen has intellectual property rights to inventions, works of science, literature and art, other works of intellectual activity; shall have the right to claim compensation for material and moral damage; have other property and personal non-property rights. It follows that the subjective right of intellectual property is the main legal component of legal subjectivity and constitutes the content of a citizen's legal capacity.

### Methods and materials

The article was prepared using general and individual research methods of scientific knowledge, such as dialectical, formal-logical, systematic, comparative-legal, technical-legal.

### Results and analysis

In this article, we will analyze the interaction of intellectual property rights only with some branches of public law, namely: administrative procedural and procedural legislation, tax and customs legislation. Also related to administrative law: 1) order of examination of objects given to the examination organization, as a result of which legal protection may be refused; 2) "Patent Law of the Republic of Kazakhstan" to Law No. 427 of the Republic of Kazakhstan of July 16, 1999 (hereinafter - the Patent Law), to Law No. 456 of the Republic of Kazakhstan of July 26, 1999 "On Trademarks, Service Marks, Geographical Indications and Names of Places of Manufacture of Goods", In accordance with Law No. 422 of the Republic of Kazakhstan of July 13, 1999 "On the protection of breeding achievements", it is also reflected in the norms regulating the pre-trial procedure of applying to the appeals council for the purpose of protecting the rights of applicants.

In accordance with Articles 22-24 of the Patent Law of the Republic of Kazakhstan, applications for patenting of inventions, utility models, and industrial models with the organization of expertise, i.e., the republican state enterprise under the right to conduct business "National Institute of Intellectual Property" of the Ministry of Justice of the Republic of Kazakhstan (hereinafter - the organization of expertise) conducts an examination.

In accordance with Articles 11, 30 of the

Law of the Republic of Kazakhstan "On Trademarks, Service Marks, Geographical Indications and Names of Places of Origin of Goods", the examination organization conducts an examination of the application for registration of a trademark (service mark), the name of the place of origin of goods<sup>1</sup>.

In accordance with Article 8 of the Law of the Republic of Kazakhstan "On the Protection of Breeding Achievements" regarding breeding achievements, the preliminary examination of the application for granting a patent for a breeding achievement is carried out by an expert examination organization, and after a preliminary examination of selection success, the State Commission for Varietal Testing of Agricultural Crops (that is, the republican state institution "State Commission for Varietal Testing of Agricultural Crops" of the Ministry of Agriculture of the Republic of Kazakhstan) and the state agency for seed testing and quality determination of the authorized body in the field of development of the agro-industrial complex commission conducts a test to determine the patentability of breeding achievements (plant varieties, animal breeds)<sup>2</sup>.

After conducting these examinations, the examination organization shall issue a decision to refuse to grant a patent for inventions, utility models, and industrial models in accordance with Article 22, Clause 10 of the Patent Law of the RK, Article 23, Clause 3 of the Patent Law of the RK, Clause 6 of Article 24 of the Patent Law of the RK produces.

In accordance with Article 12, Clause 2 and Article 31, Clause 2 of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks, Geographical Indications and Names of Places of Origin", the organization conducting the examination of the trademark (service mark), places of origin issues a decision to refuse registration of the name<sup>3</sup>.

In accordance with paragraph 4 of Article 8 of the Law of the Republic of Kazakhstan "On the Protection of Breeding Achievements", after the preliminary examination, the organization

conducting the examination makes a decision to refuse further consideration of the application for granting a patent for a plant variety or animal breed, as well as the Law of the Republic of Kazakhstan "On the Protection of Breeding Achievements" According to paragraph 5 of Article 10 of the Law, the expert organization makes a decision on refusing to grant a patent for a plant variety or animal breed based on the conclusion of the state commission<sup>4</sup>.

In accordance with Article 22, Clause 10, Article 23, Clause 3, Article 24, Clause 6 of the Patent Law of the Republic of Kazakhstan, the applicant to the Appeals Council of the Ministry of Justice of the Republic of Kazakhstan (hereinafter - appeals council) can object.

In accordance with Article 12, Clause 5, Article 31, Clause 2 of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks, Geographical Indications and Names of Places of Origin", the organization conducting the examination shall refuse to register a trademark (service mark), the name of the place of origin of goods. The appeal decision may be appealed to the appeals board by the applicant<sup>5</sup>.

In accordance with Article 8, Clause 5, Article 10, Clause 5 of the Law of the Republic of Kazakhstan "On the Protection of Breeding Achievements", the expert organization's decision to refuse further consideration of the application for granting a patent for a plant variety or animal breed, the expert organization's refusal to grant a patent for a plant variety or animal breed the applicant appeals the appeal decision to the appeals council<sup>6</sup>.

Clause 1 of Article 32 of the Patent Law of the Republic of Kazakhstan, Clause 1 of Article 41 of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks, Geographical Indications and Names of Places of Production", Article 1 of Article 22-1 of the Law of the Republic of Kazakhstan "On Protection of Breeding Achievements" - and in accordance with the Order of the Minister of Justice of the Republic of Kazakhstan dated August 28, 2018 No. 1320 "On Approving the Regulation on

<sup>1</sup> «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](https://online.zakon.kz/Document/?doc_id=1033141#activate_doc=2). (date viewed: 05.07.2022)

<sup>2</sup> 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](https://online.zakon.kz/Document/?doc_id=1033151#activate_doc=2). (date viewed: 05.07.2022)

<sup>3</sup> «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](https://online.zakon.kz/Document/?doc_id=1033141#activate_doc=2). (date viewed: 05.07.2022)

<sup>4</sup> 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](https://online.zakon.kz/Document/?doc_id=1033151#activate_doc=2). (date viewed: 05.07.2022)

<sup>5</sup> «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](https://online.zakon.kz/Document/?doc_id=1033141#activate_doc=2). (date viewed: 05.07.2022)

<sup>6</sup> 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](https://online.zakon.kz/Document/?doc_id=1033151#activate_doc=2). (date viewed: 05.07.2022)

the Appeals Council", the Appeals Council is a collegial body under the Ministry of Justice of the Republic of Kazakhstan, which deals with the consideration of applicants' objections before the court.

In accordance with paragraph 10 of Article 22 of the Patent Law of the Republic of Kazakhstan, the objection to the decision to refuse to grant a patent for inventions must be considered by the appeals council within four months from the date of its receipt, and the objection to the decision to refuse to grant a patent to utility models and industrial models is subject to Article 23 of the Patent Law of the Republic of Kazakhstan. According to Clause 3, Clause 6 of Article 24, it should be reviewed within two months from the date of receipt.

In accordance with Article 12, Clause 5, Article 31, Clause 2 of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks, Geographical Indications and Names of Places of Origin", the organization conducting the examination shall refuse to register a trademark (service mark), the name of the place of origin of goods. objection to the decision to attract must be considered by the appeal council within four months from the date of its receipt.

According to paragraph 5 of Article 8 of the Law of the Republic of Kazakhstan "On the Protection of Breeding Achievements", the decision of the expert organization to refuse further consideration of the application for granting a patent for a plant variety or animal breed must be reviewed by the appeal board within two months from the date of its receipt. According to Clause 5 of Article 8, Clause 5 of Article 10 of the Law of the Republic of Kazakhstan "On the Protection of Breeding Achievements", the decision of the expert organization to refuse to grant a patent to a plant variety or animal breed must be reviewed by the appeal council within three months from the date of its receipt.

According to Clause 2 of Article 32 of the Patent Law of the Republic of Kazakhstan, Clause 1 of Article 41 of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks and Names of Places of Production", Clause 2 of Article 22-1 of the Law of the Republic of Kazakhstan "On the Protection of Breeding Achievements" pre-trial consideration of the said objections is mandatory.

Applicants who objected to the decision of the expert organization to the appeal board, and who disagreed with the decision of the appeal board as a result of its consideration by the appeal board, have the right to file a claim

to the court against the decision of the expert organization.

Clause 1-1 of Article 33 of the Patent Law of the Republic of Kazakhstan, Clause 1 of Article 42 of the Law of the Republic of Kazakhstan "On Trademarks, Service Marks, Geographical Indications and Names of Places of Production", Article 23 of the Law of the Republic of Kazakhstan "On the Protection of Breeding Achievements" - after consideration of relevant objections in the appellate council, the decision of the expert organization to refuse to grant patents for inventions, utility models, industrial models, selective achievements, to refuse to register a trademark (service mark), the name and geographical name of the place where the goods are produced is requested to the court.

The question arises as to which court it is necessary to file these claims, because until July 1, 2021, the said claims were filed in civil court proceedings in the Republic of Kazakhstan, and after the said date, the expert organization on refusal to grant patents for inventions, utility models, industrial models, breeding achievements, goods requirements for the decision to refuse registration of the mark (service mark), the name of the place of origin and the geographical name are considered in the procedure of administrative court proceedings.

According to clause 33) of paragraph 1 of Article 4 of the Administrative Procedure Code of the Republic of Kazakhstan, a claimant is a person who applies to court to protect his violated or disputed rights, freedoms, legal interests, or a prosecutor on his behalf, or another person authorized to do so by the laws of the Republic of Kazakhstan. the person who issued it; and the defendant is an administrative body or an official who has been sued in court in accordance with sub-paragraph 33) of paragraph 1 of Article 4 of the Administrative Procedure Code of the Republic of Kazakhstan.

In accordance with Article 4, Clause 1, Clause 7) of the Administrative Procedure Code of the Republic of Kazakhstan, as an administrative body, a state body, local self-government body, state legal entity empowered to adopt an administrative act in accordance with the laws of the Republic of Kazakhstan, to take administrative action (inaction) as well as another organization is understood. In turn, the expert conducting organization, i.e. "National Institute of Intellectual Property" of the Ministry of Justice of the Republic of Kazakhstan is a state legal entity, which provides legal protection or refuses to provide

legal protection to industrial property objects declared by individuals or legal entities in accordance with the legislation of the Republic of Kazakhstan.

Currently, the regulatory norms of certain aspects of intellectual property rights are provided by the tax and customs legislation of the Republic of Kazakhstan.

Norms on the protection of the rights of the owners of rights to intellectual property objects are also provided for in Chapter 53 of the Code of the Republic of Kazakhstan "On Customs Regulation in the Republic of Kazakhstan" dated December 26, 2017 No. 123-VI (hereinafter - the Customs Code of the Republic of Kazakhstan). According to Articles 198, 199 of the Customs Code of the Republic of Kazakhstan, if during customs operations related to the customs procedure of placing goods with intellectual property objects included in the unified customs register of intellectual property objects of the Eurasian Economic Union member states or in the customs register of intellectual property objects of the Republic of Kazakhstan, the customs authority shall in case of detection of signs of violation of rights, the period of release of such goods shall be suspended. Hereby, the customs body, as one of the state bodies, takes measures to protect the rights of the owners of the intellectual property objects included in the unified customs register of intellectual property objects of the member states of the Eurasian Economic Union or in the customs register of intellectual property objects of the Republic of Kazakhstan, as well as those not included in such a register<sup>7</sup>.

On the basis of these norms of the Customs Code of the Republic of Kazakhstan, the following act was adopted: "On approval of the form of the customs register of intellectual property objects and the rules of its conduct" Order No. 109 of the Minister of Finance of the Republic of Kazakhstan dated February 1, 2018<sup>8</sup>. Decision No. 35 of March 6, 2018 of the board of the Eurasian Economic Commission "On maintaining a unified customs register of intellectual property objects of the member states of the Eurasian Economic Union" is also applied in the territory of the EAEU member states<sup>9</sup>.

As provided for in paragraph 52 of Article 1 of the Code of the Republic of Kazakhstan (hereinafter referred to as the Tax Code of the Republic of Kazakhstan) dated December 25, 2017 No. 120-VI "On Taxes and Other Mandatory Payments to the Budget (Tax Code)", royalties are: copyrights, software for use or right to use; for the use or right to use patents, trademarks or other similar types of rights; for using "know-how"; payment for the use or right to use motion pictures, videos, sound recordings or other recording media.

That is, royalties are charged for granting the right to use any object of intellectual property rights, for example, in license contracts, this includes goods, works and services in accordance with Article 372, Clause 2, Clause 3, Article 378, Clause 2, Clause 4 of the Tax Code of the Republic of Kazakhstan is confirmed when determining sales turnover. In accordance with Article 254 of the Tax Code of the Republic of Kazakhstan, expenses intended for the purchase of exclusive rights to intellectual property objects from higher educational institutions, scientific organizations and start-up companies under a license agreement or an exclusive right transfer agreement, and aimed at their further commercialization, are deductible.

According to paragraph 1 of Article 290 of the Tax Code of the Republic of Kazakhstan, when determining the amount of corporate income tax to be paid to the budget, taxpayers who are organizations carrying out activities in the social sphere in accordance with this article shall reduce the amount of corporate income tax calculated in accordance with Article 302 of the Tax Code of the Republic of Kazakhstan by 100 percent. According to sub-paragraph 3 of paragraph 2 of Article 290 of the Tax Code of the Republic of Kazakhstan, the following types of activities are included in the activity in the social sphere: science carried out by subjects of scientific and (or) scientific and technical activity accredited by the authorized body in the field of science (conducting scientific research, using the scientific intellectual property of the author, activities in the field of).

As provided in Article 386 of the Tax Code of the Republic of Kazakhstan, the turnover on the transfer of goods for export is taxed at a

<sup>7</sup> Code of the Republic of Kazakhstan "On customs regulation in the Republic of Kazakhstan" [Electronic resource] // [https://online.zakon.kz/Document/?doc\\_id=37798706#activate\\_doc=2](https://online.zakon.kz/Document/?doc_id=37798706#activate_doc=2) (date viewed: 05.07.2022)

<sup>8</sup> Order No. 109 of the Minister of Finance of the Republic of Kazakhstan dated February 1, 2018 "On approval of the form of the register of intellectual property objects and the rules of its conduct" [Electronic resource] // [https://online.zakon.kz/Document/?doc\\_id=32052243#activate\\_doc=2](https://online.zakon.kz/Document/?doc_id=32052243#activate_doc=2) (date viewed: 05.07.2022)

<sup>9</sup> Decision of the Board of the Eurasian Economic Commission dated March 6, 2018 No. 35 On maintaining a unified customs register of intellectual property objects of the member states of the Eurasian Economic Union (Moscow) [Elektronnyy resurs] // [https://online.zakon.kz/Document/?doc\\_id=39247300](https://online.zakon.kz/Document/?doc_id=39247300) (date viewed: 05.07.2022)

zero rate if the authorized state body in the field of intellectual property rights protection has confirmed the right to the object of intellectual property, as well as in the event that the object of intellectual property is exported - its value<sup>10</sup>.

According to A.K. Zharova, intellectual property right is an institution of information law. In addition, information law is a field of complex regulation. The relationship between the intellectual property right and the information law sphere consists of the regulation of relations related to the transfer and distribution of intangible results of activity in these two spheres. The subject of relations of information law is information. And the subject of intellectual property rights is the results of creative, intellectual labor, which are intangible, such as information [5, p. 36-37].

Information, depending on its importance and level of distribution, becomes a subject of the field of information law, which is currently considered as an independent field. In this area, there are many norms of various legal fields, including intellectual property rights, which recognize undisclosed information as its object.

Of course, it is necessary to mention that there is a certain connection between the right of intellectual property and the right of procedure: civil procedure and arbitration rights, because in civil and arbitration proceedings the protection of property (especially) and personal non-property rights requires the protection of these rights in case of their violation. takes place when The right to protection is a constitutional right of any person, and here the right to protection of both an exclusive right and a private non-property right is also a constitutional right of any person.

Protection of copyright and related rights, as provided for in the content of Article 49 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), shall be: 1) recognition of rights; 2) restoration of the situation before the violation of the right; 3) prohibition of actions that violate the right or threaten its violation; 4) compensation for losses, including lost profits; 5) collection of income earned by the offender as a result of violation of copyright and (or) related rights; 6)

the amount of the right to use the work in the amount from one hundred to fifteen thousand monthly calculation indicators determined by the court, or twice the value of the copies of the work, or the price of the right to use the work, which is determined based on the price usually charged for the use of the work in a manner capable of carrying the right under comparable circumstances. is carried out by paying compensation in double amount. In lieu of compensation for damages or recovery of income, the amount of compensation is determined by the court; 7) implements by applying other measures provided by legal acts related to the protection of their rights<sup>11</sup>.

Also, before the case is considered, the judge has the right to issue an individual decision prohibiting the defendant from producing, copying, selling, and using the objects of copyright and (or) related rights that are presumed to be counterfeit. The judge has the right to issue a decision to ban and confiscate suspected counterfeit copies of copyright and (or) related rights objects, as well as materials and equipment for their production and copying (Clause 2 of Article 49 of the Law on Copyright)<sup>12</sup>.

If in the Law of the Republic of Kazakhstan "on copyright and related rights" the legislator considers the owner of copyright or related rights as a way of protecting the claims of the author, the right holder and as a basis for applying to court, and in Article 33 of the Patent Law of the Republic of Kazakhstan, "Trademarks, service marks, geographical indications and the names of the places of origin of goods" as specified in Article 42 of the Law of the Republic of Kazakhstan, Article 23 of the Law of the Republic of Kazakhstan "On the Protection of Breeding Achievements":

1) disputes considered in arbitration or mediation (pre-trial order or as a conciliation procedure in court) and 2) disputes considered only in court (that is, priority of (consideration and resolution) of disputes under judicial jurisdiction). For example, in accordance with paragraph 1 of Article 33 of the Patent Law of the Republic of Kazakhstan, the following disputes are subject to consideration in the court procedure:

1) about authorship of an object of industrial

<sup>10</sup> Code of the Republic of Kazakhstan "On taxes and other mandatory payments to the budget" tax code [Electronic resource] // [https://online.zakon.kz/Document/?doc\\_id=33236181#activate\\_doc=2](https://online.zakon.kz/Document/?doc_id=33236181#activate_doc=2) (date viewed: 05.07.2022)

<sup>11</sup> Law of the Republic of Kazakhstan dated June 10, 1996 No. 6-I "On Copyright and Related Rights" // [https://online.zakon.kz/Document/?doc\\_id=1005798&pos=486;-56#pos=486;-56](https://online.zakon.kz/Document/?doc_id=1005798&pos=486;-56#pos=486;-56). (date viewed: 05.07.2022)

<sup>12</sup> Law of the Republic of Kazakhstan dated June 10, 1996 No. 6-I "On Copyright and Related Rights" // [https://online.zakon.kz/Document/?doc\\_id=1005798&pos=486;-56#pos=486;-56](https://online.zakon.kz/Document/?doc_id=1005798&pos=486;-56#pos=486;-56). (date viewed: 05.07.2022)

property;

2) on the correct submission of the protection document;

2-1) on invalidating a patent;

3) on determining the patent owner;

4) about issuing a license by force;

5) on violation of the patent owner's exclusive right to use the protected industrial property object and other property rights;

6) on the creation and execution of license agreements for the use of protected industrial property;

7) about the right to use before and after;

8) on payment of remuneration to the author by the employer in accordance with paragraph 4 of Article 10 of this Law;

9) on payment of compensations provided by this Law;

10) other disputes arising from the protection document related to legal protection.

The specified disputes, with the exception of those specified in subsections 1), 2), 3), 4), 7) and 10) of the first part of this clause, unless this is prohibited by the laws of the Republic of Kazakhstan "On Arbitration" and "On Mediation", by agreement of the parties, arbitration or may be considered through mediation. Thus, only the following disputes are considered in the court procedure: 1) about the authorship of the industrial property object; 2) on the correct submission of the protection document; 3) on invalidating the protection document and (or) the Eurasian patent; 4) on determining the patent owner; 5) about issuing a license by force; 6) about the right to use before and after; 7) other disputes arising from the protection document related to legal protection.

By agreement of the parties, the following disputes may be considered in arbitration or mediation: 1) on violation of the patent owner's exclusive right to use the protected industrial property object and other property rights; 2) on the creation and execution of license agreements for the use of protected industrial property; 3) on payment of remuneration to the author by the employer in accordance with clause 4 of Article 10 of the Patent Law of the Republic of Kazakhstan; 4) On payment of compensations provided by the Patent Law of the Republic of Kazakhstan.

In relation to intellectual property, the court is guided not only by the norms of civil procedure legislation, but also by the norms of special legislation regulating relations related to the object of intellectual property. That is, the right of intellectual property is interrelated with the right of civil procedure, its features occur in

the court's application of norms regulating legal relations related to individual objects of creative activity and the means of individualization of civil circulation participants, goods, works and services.

It should be noted that the resolution of disputes related to intellectual property objects is carried out according to the provisions of the Code of Civil Procedure of the Republic of Kazakhstan (hereinafter referred to as the Code of Civil Procedure of the Republic of Kazakhstan), i.e., the review of disputes is carried out in courts in accordance with the provisions of Chapter 3 of the Code of Civil Procedure of the Republic of Kazakhstan entitled "Departmental and Judicial". In addition, such disputes can be considered in arbitration, but for this, an arbitration clause must be included in the agreement between the parties.

If we compare with the legislation of the Russian Federation, there are differences due to the different judicial systems of these states. For example, Russia has an Intellectual Property Court. As noted in the Russian literature, the Court of Intellectual Rights has broad jurisdiction, as it hears not only disputes related to granting or refusing to grant patents, but also disputes related to the protection of intellectual rights. jurisdiction of arbitral tribunals. These disputes are considered by the Court of Intellectual Property as a court of cassation [6, p. 505]. There are no separate courts in Kazakhstan, but disputes are considered by district (equivalent to district) or additional courts as the first primary court, and disputes are considered by regional and equivalent courts of the Republic of Kazakhstan as an appellate court, and the Supreme Court of the Republic of Kazakhstan acts as a cassation instance.

### Conclusion

The intellectual property right does not exist in isolation from other areas of law and legislation, it is closely connected with the areas of public law and legislation, and is closely connected with them, and individually it is a part of the whole legal system [4]. Intellectual property rights are related to the legal regulation of ideal management, which continues its progressive development, its large, as well as the justification of private and public law (legislative) units, small industries and institutions, its future and the role of scientific and technical solutions in the context of its industrialization. It has a great future in the context of active development.

## REFERENCE

1. Щербачева Л.В. Гражданско-правовая регламентация интеллектуальной собственности в России на современном этапе: монография. – М.: ЮНИТИ-ДАНА: Закон и право, 2014. – 143 с.
2. Амangelды А.А. Право интеллектуальной собственности в системе гражданского права. Монография. – Алматы: Интерлигал, 2012 – 240 с.;
3. Амangelды А.А. Проблемы права интеллектуальной собственности Республики Казахстан на современном этапе. Монография. – Алматы: Интерлигал, 2015. – 404 с.
4. Амangelды А.А. Взаимодействие права интеллектуальной собственности с отраслями публичного и частного права // Патенты и лицензии. Интеллектуальные права. 2018. № 7. С. 66-75.
5. Жарова А.К. Правовая защита интеллектуальной собственности: учеб. пособие для магистров / Под общ. ред. С.В. Мальцевой. – М.: Юрайт, 2012. – 373 с.
6. Интеллектуальная собственность в современном мире: монография / Под ред. И.А. Близнаца. – М.: Проспект, 2017. – 672 с.

## REFERENCE

1. Shcherbacheva L.V. Grazhdansko-pravovaya reglamentatsiya intellektual'noy sobstvennosti v Rossii na sovremennom etape: monografiya. – M.: YUNITI-DANA: Zakon i pravo, 2014. – 143 b.
2. Amangeldy A.A. Pravo intellektual'noy sobstvennosti v sisteme grazhdanskogo prava. Monografiya. – Almaty: Interligal, 2012; - 240 b.
3. Amangeldy A.A. Problemy prava intellektual'noy sobstvennosti Respubliki Kazakhstan na sovremennom etape. Monografiya. – Almaty: Interligal, 2015. – 404 b.
4. Amangeldy A.A. Vzaimodeystviye prava intellektual'noy sobstvennosti s otraslyami publichnogo i chastnogo prava // Patenty i litsenzii. Intellektual'nyye prava. 2018. № 7. S. 66-75.
5. Zharova A.K. Pravovaya zashchita intellektual'noy sobstvennosti: ucheb. posobiye dlya magistrrov / Pod obshch. red. S.V. Mal'tsevoy. – M.: Yurayt, 2012. – 373 b.
6. Intellektual'naya sobstvennost' v sovremennom mire: monografiya / Pod red. I.A. Bliznetsa. – M.: Prospekt, 2017. -672 b.

