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TERRITORIAL PRINCIPLE OF PATENT RIGHTS: A PRAGMATIC REASSESSMENT

Summary

The article is devoted to reveal the contradiction of actions in territorial principle of patent law in different countries on the international level. The problem of consumer and international patent protection procedure is raised in differences of protection of intellectual property rights in different countries. It has been suggested to reform the system of patent law and develop a unified model of the patent law.

Key words: patent law, the principle of territoriality of patents, world patent, protection of inventions, international agreements.

Formulation of the problem. Legislation around the territorial aspect of patent law is regulated differently and different territorial model of fixed protection. However, such differentiation does not meet the realities of modern conditions of economic and political integration, world trade and economic processes, which leads to the need for establishing a single unified approach to the use of the patent internationally. In this regard, great relevance is the problem of settlement and territorial unification aspect of the principle of patent law in the international legal acts.

It should be noted that at present the territorial dimension at the international level virtually not regulated, as the main international legal acts regulating relations in the field of intellectual property does not contain rules aimed at its unification.

Due to technological progress, the need to protect the dignity of patented inventions internationally, raises questions about the possible transformation of the content of the principle of territoriality and to change its action under the new conditions. Consideration of this principle in its modern interpretation involves the study of issues such as relationship conflict and territorial regulation of intellectual property, determination of jurisdiction and other issues of a procedural nature.

Analysis of recent research and publications. In the article the works of foreign scientists: Karl Heinz [2], P. Mehhs (USA) [3] A. Metzger [4] G. Dinvudi [5], G. Nykelshpura (Belarus) [8], L. Lessih (USA) [11], Russian scientist Mikhail Boguslavsky [1] and the Ukrainian PhD in Economics V. Valle [10].

The purpose of the article. Bring the need to review the patent territoriality principle in modern society.

Presenting main material. Currently legislators of many countries are actively discussing the problem of developing common approaches to the issue of harmonization of relations patentee and society. The lack of consensus is due not only traditional confrontation between developed and peripheral countries, but a difference of views on this issue among the developed countries. Expressed opinions as to support the international patent (expansion of international trade, increased competition) and for national and regional models (protecting the interests of copyright holders, strengthening the fight against counterfeiting, etc.).

Swiss lawyer A. Troller explains the importance of the territorial principle that "content is right for the intangible benefit shall be determined by the laws of the State in which the Commissioner may prevent the removal of the industrial benefit of this good all the others. The territorial principle allows use according to its content law of the country where protection is claimed " [1, 15].

The territorial nature of intellectual property has developed priorities for national economic development. Increasing competition of national economies to focus on the intellectual component of production and trade does not abandon the principle of national law. And the most keenly interested in it the state with a low level of economic development and innovation resources. States with higher rates (eg, US) more loyal to the removal of the territorial nature of intellectual property, as the international intellectual property law primarily provides the conquest of foreign markets.

The result of the concept of territoriality is the recognition that a violation can only happen in a country where intellectual property rights are recognized. In fact, each state establishes exclusive jurisdiction over disputes relating to intellectual property rights, recognized in its territory and rejected any foreign jurisdiction over intellectual property rights. By Remark Karl Heinz for jurisdictions rigid concept of territoriality result was that intellectual property, most flexible and immaterial considered as well as land, most material form of property [2]. And this view we consider more reliable and modern.

We should pay particular attention to the protection of intellectual property, limited territorial principle.

International agreements minimize the negative effects of the territorial nature of intellectual property, but have not removed it. National legislation lex fori (the right of the court) defines as providing protection and procedures for protecting intellectual property rights.

However, the territorial nature of exclusive rights in the XIX century came into conflict with the interests of the owners who were interested in entering into civil turnover abroad their inventions. As the professor of the University of Illinois (USA) P. Mehhs, "with a level of protection limited incentives for profit, which could extract only within one country. The authors of the works and inventors from small countries have seen their work reproduced worldwide but a reward for them, they received only in the national market " [3, 25].

According to A. Metzger, the decisive question is under what conditions holders may sue for damages on one single law (or at least to a certain number of laws) - for damage caused in the world, and even require judicial worldwide ban without reference to two or even more jurisdictions [4, 18].

With the latest opinion we fully agree, but the question arises during the process of the patent. It should be noted that, in accordance with international standards, there is a requirement for invention - a mandatory novelty, which is verified internationally. However, there is still no such thing as a worldwide patent, which would greatly simplify the system, as in our opinion. Today there is no single patent that would cover all countries or at least a large number of countries. The patent system is still limited territorial system; for protection in a country still need to obtain a patent in each country separately and in accordance with its national law.

Given the variety of national legal regimes and protection of intellectual property rights internationally, G. Dinvudi allows for viewing of the principle of territoriality [5, 715]. As will see attempts to create international patent, but they are not sufficient for the development of modern society.

Thus, since the signing of the Paris Convention for the Protection of Industrial Property 1883 (hereinafter - the Paris Convention) [6] a period of internationalization. For the first time in the world was a system of supranational economic and legal relations, open to a wide range of countries. However, the Paris Convention does not eliminate the territorial limitations of the patent and has not solved many issues that arise in the patenting abroad. The most important questions of patent law, such as the list of objects which can be given protection, patentability criteria, benefits for novelty patent term and t. E., Were the responsibility of national patent laws of countries party to the Paris Convention. In addition, the Paris Convention were not addressed issues related technical field processing applications, such as standardization of requirements for registration, and no resolution of the issue of organization of patent search and examination, which is the most time-consuming procedures in any patent Office.

At present, in the era of globalization of the world economy, humanity is moving to a system that has more international character: we Patent Cooperation

Treaty - (RST - "Patent Cooperation Treaty"), which was concluded at 1970 [7]. The mentioned Agreement provides for the filing of an international application, which can be a set of national applications - no existing patents and applications. And then they pass an examination in each of these countries. Agree, this procedure is long and expensive, among other things, there should be mentioned the cost of examination of the same invention to be carried out in various countries under existing agreements; cost of translation of the patent on the necessary materials for the domestic law of language and maintenance cost of the patent in force in each country separately, as for the maintenance usually paid an annual fee, the amount of which is very significant. That is, first, the PCT does not grant patents; actually engaged in this national offices, each in so far as it is concerned, issue a patent application under the PCT. And secondly, there is no such thing as a worldwide patent. PCT does not provide for such a patent, and as a result issued by regional and / or national patents. Perhaps such patents will be only one procedure if the applicant has only one department, but they can be 10, 25, 50 or as much as, after all, wants applicant. Since such a thing as global security, is missing, the inventor must pay the filing fee and the fee for maintaining the patent in force in each country in which he or she wants to get protection [8].

We emphasize that here, after the issuance of the patent, great importance is the implementation of rights in each country. The fact that the initiative in implementing patent rights against potential patent infringement belongs exclusively. Identification of potential or actual breaches and notification of the offender violated his right to a patent is exclusively for the patentee. That patentee has its own monitor the lawful use of his invention. This is despite the fact that over a patent they were plachena certain amount. Here, in our opinion, the question arises: why then should the state pay, if the patentee protect their invention in fact does not receive - no special services that carry the same protection of inventions. Detection of violations at the national level is possible only if the potential patent infringer wants "his" invention. Interestingly, the settlement of this issue often entail the conclusion of a license agreement between the original and so patent that applied. If you have already started production earlier

patents invention - "violator" compulsory license is granted (TRIPS Agreement provided in 1994 [9, p. 31]).

Briefly International agreements examined above provide access of foreigners to the national legal systems of protection, are the basis for recognition of the right of priority, but they do not provide that the presence of security in one State Party mean its automatic provision in another State Party. On the contrary, establishes a different rule. Thus, Article 4bis Paris Convention for the Protection of Industrial Property 1883. proclaims the independence of patents of the States Parties [6].

Again, back to the history of intellectual property, which indicates that at various times the partition revised to balance the rights of creators and inventors and the public interest. But every time there were new technologies, this equilibrium is disrupted. Again, it was necessary revision of the regime of intellectual property to achieve the specified period.

The current regime of protection, in our view, has long ceased to be an equilibrium, and therefore requires a revision of the fastest to achieve a balance between the interests of owners and society. The modern system of intellectual property protection have not kept pace with new technologies and requires constant updating. We believe that the legislation should establish a balance between the benefits of the exclusive rights of the owner and an additional burden on society. This balance must always be reviewed together with the introduction of new technologies. Indeed, because of the technological boom we are dealing with constant change in environment and conditions of the system of intellectual property protection. The objective of this system, in our view, should be to ensure owners of income, and society - the right to technological progress.

The problem of reforming legislation on patents related to the fact that the laws in this area actively lobbied influential corporations that attract significant resources for the implementation of enabling them protection regime that is not always consistent with the public interest.

The reform of legislation on patents is under the influence of pharmaceutical industry representatives and companies in the field of computer technology. Starting in

the 1970. After expanding the list of health facilities (creation PCT), there were two camps with diametrically opposing views. One of them is represented by pharmaceutical corporations, defending the need to improve the protection of patents, as they invest millions of dollars in market research and introduction of new drugs.

On the other hand, companies grouped in electronics and computer software, which act by reducing the level of protection or even its complete abolition in connection with the fact that innovation these industries characterized by a high degree kumulyatyvnosti and patents create obstacles to development new technologies. Protests second camp is also related to the fact that this area is extremely large amount of issued patents. This exacerbates the risk that new product development in the field of computer technology can cause accidental infringement of certain patent. These arguments speak in favor of the protection of inventions by patents in these two areas can not be the same.

Often say that good health is a prerequisite for the invention patent for economic development. However, defending this position, the researchers did not take into account that innovation can only progress in a successful society. They do not associate high commodity prices with the cost of litigation and royalties for use of patents. Do not overlook that in patent war is complicated by the influx of new technologies.

As correctly noted by our compatriot V. Valle, the main internal conflict of an international system of intellectual property protection is to establish a monopoly of developed countries and transnational corporations on intellectual property rights that its purpose should be public and serve the interests of humanity [10, 132-134] .

Another scientist - Professor of Law at Stanford University (USA) L. Lessih expressed more radical and underlines that in a world where competitiveness innovators have to resist not only the market, and government, the new carriers would not succeed. This is a world of stagnation and stagnation, increasing. It is the Soviet Union under Brezhnev era [11, 165].

In this regard it should be noted that the role of intellectual property rights should be limited not to support a particular business, and to stimulate technological progress by providing owners of rights and society - access to the results of intellectual activity.

We believe that reform of the legislation on patents should resolve these contradictions of the modern patent system and to overcome the territorial principle of the patents.

Conclusions.

1. Existing today territorial principle of the patent almost takes us back in the days of feudalism. Numerous accumulation of patent protection at the territorial level of each individual state, in our view, lead to irrational and unjustified costs. As a solution we see the need for a single unified set of documents - a single patent in force at international level, with no geographical limitation (as an example - the nature of the European Court, whose decision is of international importance, the system of patent law in the US - the results of the examination USPTO grants patents operating throughout the United States, not just in some states).

2. We believe that in order to guard and protect "crossed" one state, it is necessary to rely on specific legal arrangements. At the level of universal international legal instruments establishing of a unified model of patent law, in our opinion, possible or by the unilateral introduction of this principle (which is true, for example, for the EU), or by concluding bilateral or multilateral agreements. However, the unilateral establishment of a model will have a negative impact on foreign trade and complicate relations with major trading partners. A sign bilateral agreements can come into conflict with the provisions of Art. 4 of TRIPS, under which any benefits, facilities, privileges relating to the protection of intellectual property rights, issued by one Member State to another participant agreement immediately and unconditionally apply to all States which have signed this Agreement.

Thus, at this stage the most realistic and mutually beneficial way to solve this problem, in our opinion, could be signing multilateral agreements between the countries with the extension of patents beyond the boundaries of one state, which

eventually creates a unified set of documents. Now there are two examples: First, attempts to create a single European patent with effect in the territory of EU Member States - based on the Convention for the European patent for the Common Market (Convention on patent Community), signed in 1975 in Luxembourg and subsequently (1985) called the Agreement on the Community patent. Signed in 1989 12 countries - members of the European Community of the agreement on the Community patent has not been ratified.

Second - European Agency for the study of medical products (EAEMR). It provides centralized assessment and subsequent permit the introduction into circulation of new medical products, valid throughout the European Union. European Agency study in London, it accelerates commercial sales of medicines for humans and for veterinary purposes.

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