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## THE MAIN APPROACHES TO DEFINING THE ESSENCE OF «INTELLECTUAL PROPERTY»

*ABSTRACT. Modern development of the world economy is focused on creation, universal introduction and effective use of new scientific knowledge. Realization of this task is impossible without development and improvement of the relations in the field of intellectual property, which causes the need for analysis of category's essence. Today «intellectual property» is a polysemantic concept, the essence and definition of which vary depending on the sphere of its application. According to this concept, detailed analysis of existing approaches to determining the economic, legal and sociological value of this concept is made in this article. From the results of the analysis it became clear that the legal approach interprets intellectual property as set of exclusive rights that allows the definition of the volume of the rights to the results of intellectual activity, belonging to owners. In turn, the economic approach considers intellectual property as the system of relations arising in the course of production, distribution, exchange and consumption of intellectual work's results, and is generally directed towards the determination of creation's efficiency and the use of intellectual property's objects. As for the sociological approach, it defines intellectual property as the set of public relations arising upon the emergence and use of intellectual activity's results, and is generally concentrated on the identification of norms and rules of behavior of the participants taking part in all stages of the life cycle of intellectual products. On the basis of the analysis of existing approaches to the definition of the category «intellectual property», the author's treatment of this concept, which combines the main ideas of the legal, economic and sociological points of view, is developed. At the present stage of development, the need for specification of the definition «intellectual property» is caused by the lack of a comprehensive approach to the definition of intellectual property's essence. Thus, a new vision of this concept allows us to look at the question of interpretation of intellectual property from all points of view, thereby essentially expanding value of the category.*

*KEY WORDS. Intellectual property, preconditions, essence, approaches.*

Modern economic development is shown as the passage from the industrial to the postindustrial stage of development, the establishment of innovative economies where the most important evolutionary factors are new scientific knowledge.

The creation, universal introduction and effective use of new scientific knowledge is impossible without development and improvement of the relations in the field of intellectual property, which implies the analysis of the category of essence in order to create a scientific basis for practical research into the function and formation of the innovative path in the economy of a country.

The definition «intellectual property» was given by the Stockholm convention which created the World Organization of Intellectual Property. According to article № 2 of the convention, intellectual property is a set of exclusive rights to creative work in the industrial, scientific, literary and artistic spheres. Therefore, the definition «intellectual property» is used as a collective definition (1.7) The basis of intellectual property is authors and patent rights, identification means and know-how.

In spite of recent interpretation of the definition, the conditions for the development of «intellectual property» were formed long before and caused by humanity's evolution. The main conditions of the creation of «intellectual property» are in Table 1.

Table 1

**The main preconditions for creation of the definition of IP**

Conditions	Description
1. Historical	Due to the development of scientific and technological processes, the amount of scientific innovations, musical compositions, literary creations used by millions has increased
2. Engineering	Patents of typography and the development of manufacture had created the conditions for mass edition of literary, researches, marketable and art works
3. Economic	Widespread involvement of exclusive rights for intellectual creation in commodity money relations
4. Psychological	The sense of property right as a hallowed and personal right has helped to create the tendency of a creative professional class which has the property rights
5. Legal	It is very important for every economic relations partner to possess the conditions and in this regard the most convenient model appropriate for the property right.

The external need to create the tools for appropriate protection of intellectual work has existed from the time of the first intellectual work until widely-developed scientific and technological process.

Nowadays intellectual property is the subject of legal, sociological and economic points of view, so leads to a huge range of meanings and contents, causing different renderings of the definition of «intellectual property». Thus, it must be confirmed that there is no inclusive way to define «intellectual property» in modern life.

The informational background for investigating this question is a scientific conception of relations in different fields. Three approaches can be distinguished for the definition of «intellectual property — economic, legal and sociological approaches. (7; 320).

As a matter of law, intellectual property is considered as a complex of personal rights in property management.

**The Characteristics of the Law: Principal Theories**

Table 2

Data	Private theories				Public theories	
	Natural right	Intellectual rights	Immaterial	Personalities	Pactional	Exclusive right
1. Period of accruer	17 <sup>th</sup> -18 <sup>th</sup> cent.	Late 19 <sup>th</sup> -early 20 <sup>th</sup> cent.	The second half of the 19 <sup>th</sup> cent.	The second half of the 19 <sup>th</sup> cent.	17 <sup>th</sup> -18 <sup>th</sup> cent.	Late 19 <sup>th</sup> -early 20 <sup>th</sup> cent.
2. Representantives	G. Grotius, B. Spinoza, D. Lock, J-J. Rousseau, T. Jefferson	E. Pickar, M. Bozirian, E. Puer	I. Koler	O. Girke, I.K. Blunchly, F. Gareys	P. Golbach	A.A. Pilenko, G. Shershenevich
3 Item of intellectual property	Intangible benefits	Intangible benefits	Intangible benefits	Intangible benefits	Intangible benefits	Intangible benefits

<p>4. Matter of intellectual property</p>	<p>Absolute law of property and personality RID with adjustment for specific identity of item</p>	<p>Rights which are not divided into real, compulsive, personal.</p>	<p>The Set of rights: personal, non property rights (creation RID), material rights (the possibility to use RID by any legal means)</p>	<p>The author's rights are a non-isolated section of the person</p>	<p>Individual agreement between State and Author</p>	<p>Collective notion for defining exclusive rights of intellectual property</p>
<p>5. The main aspects</p>	<p>Any kind of work creates property, which includes property for RID, as for IP conditions of property rights are used</p>	<p>The rights differ from property law because of time, the area of action, security and the peculiarities of usage</p>	<p>The rights are positive: they give a chance for person to use property, not to prevent it being used t by different persons.</p>	<p>The property loses its private status in case of publishing or granting a patent. But the right is still a personal right of the author.</p>	<p>Legal monopoly is payment to the author for public ownership by means of general publication</p>	<p>The basis of IP is a prohibitive function which allows the author to prevent unauthorized usage his property by different people</p>

Today there are many theories that define the legal essence of intellectual property, the most logical being the division of theories into private and public [4;21]. The main criterion for classification in this case is interest: for public theories, the meaning is the public interest (the interest of a social group, admitted by the state and secured by rights), for private theories it is private interest (materialized in the interest of certain individuals — in their legal and material position). The features of the main theories of the legal approach are given in Table 2.

On the basis of the table it can be concluded that notwithstanding the large number of theories that define the essence of intellectual property from the legal viewpoint, they have a lot in common, namely to:

- a) consider this concept to be a collection of rights that belong to the creator of intellectual property or a person who obtained these rights on a refundable basis;
- b) emphasize the specific nature of rights and the object of intellectual property;
- c) demand the provision of protection of rights for the results of the intellectual work of the proprietor in order to avoid its unauthorized use by the third parties.

Still, there are certain differences between these theories that in essence go back to finding an answer to the following question: who can get the right to use the results of intellectual activity, how, and on what scale?

At present the following interpretation of intellectual property is widely-accepted — a collection of unique rights of a personal and proprietary character to the results of intellectual activity (first of all, artistic activity) and other objects equated with them, the precise list of which is stipulated by the legislation of a individual countries.

In its turn, the sociological approach to determining the essence of intellectual property is now in its initial stage and until recently this approach did not have a developed theoretical and methodological apparatus or instruments for research. Now, however, there are some initiatives by Russian researchers in this direction. In this respect, M.G.Ivanova's work is particularly interesting: in her work intellectual property is viewed as a collection of public relations that appear upon using the results of intellectual property [2;5], and have specific features:

- a) means of attribution of special consumer properties to a product;
- b) means of competitive advantage;
- c) means of getting excess profit;
- d) means of lawful monopolization of knowledge;
- e) means of synergy of creative potential of the organization.

From the economic viewpoint, intellectual property is considered as a system of objective relationships that arise between the artist and third parties on awarding and subtracting the results of intellectual property during its production, distribution, exchange and consumption. Today there are traditional and neoinstitutionalist economic approaches to defining the essence of intellectual property (table 3 [5;18]).

Table 3

**The Characteristics of the Principal Theories of the Economic Approach**

Parameter	Economic approach	
	Traditional	Neoinstitutional
1. Basic conception	Continental legal tradition	Anglo-saxon legal tradition
2. The object of intellectual property	Non-material values	Rights to results of intellectual activity
3. The essence of intellectual property	The relationship in terms of appropriation of objects expressed in the objective form taking into consideration the specifics of the form of existence of these objects and their commercialization	A legal authority complex in relation to the results of intellectual activity and its objects attributable to a certain individual with the simultaneous prohibition of these objects for all the other people
4. Principal provisions	a) One thing — one proprietor; b) munity and sanctity of intellectual property; c) the specifics of triad of rights exercise: no physical control over the object; no connection between ownership and exercise in time and space of a physical medium; reversibility of disposition	a) One thing — many proprietors b) making use of every authority separately (commodity); c) estimating economic feasibility of rights specification — correlation of different benefits and expenses connected with having a certain authority

Having considered the category of intellectual property from the economic viewpoint, we can conclude that the theories that exist nowadays are not antagonistic, rather they are complimentary. Thus, the traditional approach views intellectual property in terms of a triad of rights: ownership, exercise and disposition — the rights are acquired by the proprietor of the object of intellectual work as a result of its production. In turn, the neoinstitutionalistic approach itemizes these rights, dividing them into a totality of authorities that can be exercised as a commodity, thus giving additional economic effect and providing a domineering position for the proprietor on the market.

Thus, in modern conditions, intellectual property can exist in the form of a commodity, a financial asset, a factor of production, capital, a source of income, the object of economic contracts, a competitive advantage for a company on the market and the country as a whole, because it acquires value (utility, user value, exchange value), fulfils a distribution function (establishes balance between production and consumption), and encourages production.

Given this economic dimension, intellectual property has the following features:

1. Not limited in space, consequently, can be used by an unlimited number of people.
2. Is not characterized by physical consumption, does not undergo wear and tear (intellectual wear is possible).
3. Requires separation from other results of intellectual activity through legal confirmation.
4. Can bring income only under conditions of rights securing that makes universal accessibility impossible.
5. Provides an opportunity to form spheres of influence on the market, exercise control over deriving gains from using the object
6. Legal defense is limited in time, after this time expires the object becomes public.

Based on the analysis of the existing approaches to defining the category of intellectual property, the author's interpretation of this concept is given (Fig.1); this interpretation combines ideas from the legal, economic and sociological perspectives. The necessity to clearly define intellectual property is predetermined by the absence of a complex approach to defining intellectual property. Thus, the new understanding of this concept helps to view the question of intellectual property from all sides and expand the meaning of this category.

Following the above, it must be considered that «intellectual property» is a multisubject notion whose meaning depends on its usage. It should be pointed out that the approaches to the evaluation of intellectual property are not pragmatic, like the existing research in the field and its entrenchment in all spheres of society. It gives rise to new interpretation of intellectual property.

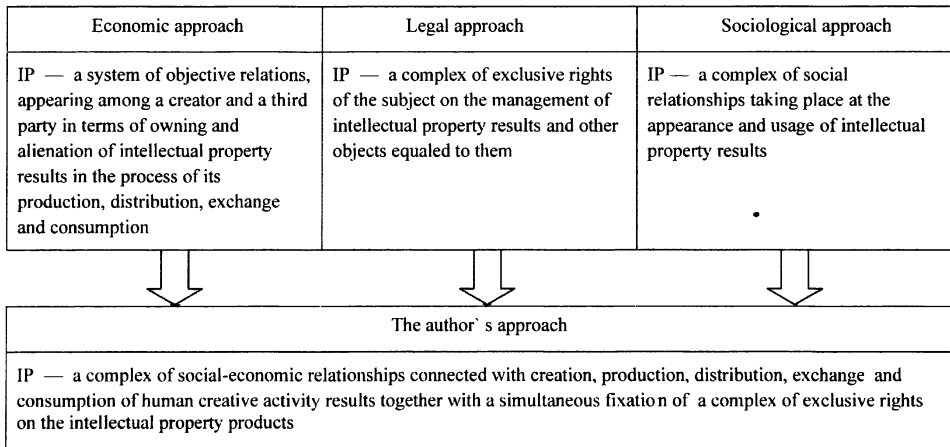


Fig. 1.

Therefore, intellectual property is one of the strategic socio-economic tendencies in modern social development and needs further theoretical examination of its main aspects.

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