

Features of the Study of Intellectual Property Objects Within the Framework of Already Conducted Expertises

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The purpose of expert activity is to provide the body conducting the proceedings with factual data, which, if certain requirements are met, are recognized as evidence and are used as a basis for this or that decision in the case. Addresses the mechanism of performing the sequence of research steps that forensic experts are guided by in the evaluation of intellectual property. Also presents an example of an expertise, which was carried out by the experts of the Commodity and Cultural Expertise Departments at the “National Bureau of Expertises” of the National Academy of Sciences of the Republic of Armenia.

Keywords: expert, intellectual property; expertise; copyright protection; professional knowledge; research.

Особливості дослідження об'єктів інтелектуальної власності в межах уже проведених експертиз

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Метою експертної діяльності є надання органам, що здійснює провадження, фактичних даних, які в разі дотримання певних вимог визнають доказами та застосовують як підставу для ухвалення конкретного рішення у справі. Розглянуто механізм виконання послідовних дослідницьких етапів, якими судові експерти керуються для оцінювання інтелектуальної власності. Наведено також приклад експертизи, яку проводили експерти відділів товарознавчої та культурологічної експертизи «Національного бюро експертиз» Національної академії наук Республіки Вірменія.

Ключові слова: експерт; інтелектуальна власність; експертиза; захист авторських прав; професійні знання; дослідження.

Expert activity is closely linked to the process of proving, i.e., with the collection, analysis and evaluation of evidence in order to identify circumstances that are important for a legal, reasonable and fair resolution of the case, which is carried out by applying specialized knowledge by providing an expert opinion [1].

In the context of expert activity, there are often cases when, in order to clarify rights vio-

lated due to illegal use, the amount of damage caused, compensation and a number of other issues, there is a need for a specialist with special professional knowledge. The expert will conduct the appropriate objective research and give an opinion in the trial.

When conducting (implementing) knowledge-based assessments, greater importance is attached to personnel with high professional qualities, applied and transferable skills, effec-

tive knowledge management, the introduction of international experience and other similar incentives.

Intellectual capital, which is the set of knowledge, abilities and work skills of human resources at the level of the organization, in the case of effective management, can become a valuable investment, the know-how of the given organization, which is the best guarantee for success nowadays.

The World Intellectual Property Organization has defined intellectual property as the product of human intellectual work, such as inventions, works of literature and art, as well as signs, names, images and designs used in commercial activities.

If intellectual property is not protected, there will be no more motivation for creative people and the concept will not develop.

Illegal use of intellectual property violates the rights of the person or company that owns the intellectual property. Intellectual property infringement is a criminal offence [2].

By using the expert's special knowledge, on the basis of the conducted research, it is possible to answer the questions posed by the body conducting the proceedings, and the process and results of the research are recorded in the expert's conclusion, on the basis of which the initiating body makes an appropriate decision. This circumstance forces us to be more vigilant and conduct comprehensive research so that the obtained results are as informative, reliable and unbiased as possible.

At the "National Bureau of Expertise" of the National Academy of Sciences of the Republic of Armenia, the examinations of objects resulting from intellectual property are carried out mainly within the framework of complex examinations by the departments of commodity, cultural, economic and other examinations.

In this article, we would like to address the expertise that is carried out jointly by the Departments of Commodity and Cultural Examinations.

In contrast to other directions, the expertise of intellectual property results in the Com-

modity Expertise Department is more recent, but over the past three years, various expertise has been appointed by the criminal proceedings authorities, which differed significantly from one another. The differences are caused by a number of circumstances, but the reason for their existence is mainly one: mental activity, which is an "intangible object of the creative mind", and the intangible object born as a result of the thinking of the creative mind is unique, characterized by the creative features of the given creator.

The result of intellectual activity is the product that is expressed in an objective way and depending on its nature, it can be a work of science, literature, art, invention or industrial design. Each of these results has its own specific conditions for their protection and use, as well as for the exercise and protection of the rights of their authors.

When it comes to determining or compensating the creator or owner of a product, intellectual property rights become a decisive factor in managing the reproduction of one's creative work or preventing its illegal use, its sale by copycats, and other violations. In this regard, there is a need to apply special professional knowledge and conduct objective and multifaceted research. As we have already mentioned, the results of real estate are varied and diverse, therefore each examination is unique, however, there are basic value-forming factors that are taken into account when performing each examination.

As a result of our research, we have adopted as a basis a mechanism for performing a sequence of steps, which we are guided by during the evaluation of intellectual property. We conventionally divide the sequence of steps into the following stages:

Stage 1: study of the object to be researched, highlighting its features;

Stage 2: determination of scope and nature of rights, control of ownership of rights, control of legality of rights and description of intellectual property as an object of assessment, description of object of right (invention, trademark, etc.);

Stage 3: approval of the assessment subject according to the pre-defined assessment objectives;

Stage 4: collection of information on the estimated intellectual property, its rights holders, the volumes of use of the market segment using intellectual property, taking into account the defined assessment goals;

Stage 5: analysis of collected information, determination of qualitative and quantitative characteristics of intellectual property objects and rights, as well as specification of options and criteria for its use, determination of reliability of preliminary information;

Stage 6: selection and justification of methods and approaches for the assessment of intellectual property objects;

Stage 7: mathematical calculation and matching of results based on collected and analyzed information;

Stage 8: formation of opinions and conclusions about the evaluated object at the moment of evaluation, when determining its value, market research and, if necessary, analysis of the evaluated object's compliance with market requirements;

Stage 9: determining the reliability of intellectual property assessment results and formulating recommendations on their use;

Stage 10: drawing up an expert opinion.

Objects of intellectual property are scientific, artistic and literary works, in the field of production - the results of creative activities, including discoveries, inventions, industrial designs, computer programs, databases, trade secrets, trade names and service marks [3].

There are often cases when it is necessary to perform complex research in order to calculate the value of some cultural values that are the result of intellectual property.

Cultural values are properties of a religious or secular nature that have historical, artistic, scientific or other cultural significance.

In order to find out the cultural significance of the objects that are the result of intellectual property and a number of other issues, a forensic cultural expertise is being carried out. The performance of forensic expertise involves

the use of various methods to carry out a wide range of research. The main methods and methodologies used are: universal cognitive method, dialectical materialism methodology, which are based mainly on the perception of the material world, basic cognitive knowledge, as well as the ability to reflect the material for recognition and bring out the ability to obey certain laws. General scientific methods are also used, which are considered during the study of each research object, they are: observation, measurement, description, comparison, testing, modeling, etc. Partial scientific methods are applied to the study of works of art, the material component. At the same time, the work of art is not perceived as an indivisible object, but is divided into components and subjected to multi-dimensional research. These natural methods have a decisive role in the cultural and artistic as well as copyright protection examination to answer such questions as the circumstances, time and place of creation of the given object, as well as the material. During the cultural expertise of individual pieces of art, the non-destructive method is also used, where various technical means are used, for example, a microscope, photography through special filters, ultraviolet and infrared lamps, X-rays. During the conduction of the research, the fact that the world around us is recognizable and has the ability to obey certain laws is also taken as a basis. In this regard, accepting the idea of the recognizability of the material world and during the conduction of forensic-cultural expertise, appropriate, applicable artological special methods are selected, which are based on artology and art history, scientific analyses. The first excludes the use of special technical means, the second one approaches the work of art as a generalized integral phenomenon that exists in the definition of its own laws. The first group of artistic research includes the collection of information about the work of art and its author's identity, the place of creation, the study of written documents about these works (catalogues, contracts, opinions of previous experts), as well as a simple visual inspection of the works, existing on the frame and pre-frame, by studying records, signatures,

seals. The second group of artistic research is aimed at the semantic saturation of the work of art, the collection of information on its internal content, historical conditions of creation and studies of the individual face of the author, which is applied by special methods developed in art criticism.

The methods of expertise related to the results of intellectual property protected by copyright do not differ much from other expertise, the only difference is that it is necessary to find out whether the copyright of the artist has been infringed, or not.

To complete what has been said, we would like to present an example of the examination, which was performed by the relevant experts of the Commodity and Cultural Expertise Departments.

Person X, under certain circumstances, committed theft of bust Y, as a result of which the initiating body needed to make an appropriate decision to find out the market value of the aforementioned bust Y, in order to determine the appropriate punishment and the outcome of the case. It should be noted that there are often cases when the initiating body, under the above circumstances, only makes a decision on the need to conduct a forensic commodity expertise, however taking into account the fact that the question of identifying bust Y as a cultural value is beyond the narrow professional knowledge of

a commodity expert, so in such cases, guided by the legal regulations in force in the Republic of Armenia, in particular, Article 246 of the Code of Criminal Procedure of the Republic of Armenia, a complex forensic-cultural and forensic-commodity expertise is appointed.

In conclusion, it should be mentioned that the study of intellectual property rights is unique, since in each specific case the author's professional activity, rating, level of fame, the presence of copyright protection, uniqueness and/or inimitability of the object under study, date and/or period of creation, materials used and a number of other features are studied, each of which is an important factor in the process of forming market value.

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