PARTICULARITIES OF INTELLECTUAL PROPERTY DEVELOPMENT IN GEORGIA

INTELEKTUĀLĀ ĪPAŠUMA ATTĪSTĪBAS PASĀKUMI GRUZIJĀ

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Abstract. *The article examines the nature and significance of intellectual property in Georgia. The issue is highly interesting both from theoretical and practical viewpoints. The Law on patents was adopted in Georgia in 1999 and has undergone many changes since then. The Law was significantly improved as a result of 2010 amendments. In general terms, the intellectual property is a field of law, which governs and defines the property rights and personal non–property rights in the field of creative activity. To explore these issues, the article makes reference to a number of earlier assumptions, historical context and past approaches. Some authors use the term 'patent pyramid,' comparing it to a casino, where three persons are engaged in a state or sometimes inter–state innovative game. The article looks at the issue in the context of Georgia. Georgia declared independence in 1991, which also marked the beginning of new era in the field of inventions. Georgia's National Centre of Intellectual Property – Georgian Patent – was established in 1992. Georgia is a member of The World Trade Organization (WTO) established in 1993. Hence the UN–approved requirements of the World Intellectual Property Organization (WIPO) related to the intellectual property are binding upon Georgia, as are the requirements pertaining to the industrial property. We conclude that Georgia's Patent Law needs further improvements, as the improved law is likely to contribute to the intellectual property in Georgia and lead to significant reduction in a number of disputes in the given field.*
Keywords: *intellectual property.*

Georgia's Patent Law is in effect since 1999 and it has undergone number of changes since its adoption. The Law was significantly improved as a result of 2010 amendments. The opening article of the Law states that the Law regulates all relations pertaining to the development, use and legal defence of inventions and utility models.

In the glossary of intellectual property (3.), the intellectual property is defined as a field of law that determines and protects the property and personal non–property rights in the field of creative activity. To explore the issue in question, we deem it interesting to refer

to a number of earlier assumptions, historical context and past approaches. Some authors use the term 'patent pyramid,' comparing it to a casino, where three persons are engaged in a state or sometimes inter–state innovative game: The first person is an author of invention or a patent holder who joins the game with double stake: a patentable idea and a patent fee. There is a clear–cut link between the money and creativity. Freedom of creation by all means is a good thing, although it is often accompanied by moneyless freedom, while an author of invention who holds special right to make use of his/her innovation, pays fees to the State which acts as the defender of that right. The state uses the sum of fee to promote expedited and large–scale realization of the invention by a patent holder.

- The second person is an enterprise who materializes an idea into a competitive commodity, taking risk at its own cost.
- The third person is a State power as the body executing the authority and a banker, who establishes rules of the game, through its patent authority, and strives to "hit the jackpot."

Incidentally, these so called rules of the game are well observed in Georgia's Patent Law: the budget of Georgian Patent is approved by the chairperson of the Georgian Patent, subject to agreement with the country's prime–minister.

Some authors look at the historical context of the issue in question in the context of Georgia as part of the Russian empire since 1801:

- In 1812 a manifesto on inventions was published, which governed the rights and privileges of inventors and promoted development and strengthening of industrial property;
- In 1826 a new statute of invention privileges was created;
- In 1870 a new patent law was adopted;
- In 1879 the issues emerged again relating to reforming the law on inventions or privileges of patent holders, while in 1896 the Government passed positive decision on the matter;
- In 1919 Vladimir Lenin signed a decree which abolished the patent laws of the Tsardom of Russia and established the socialist form of protection of inventions – author's certificate. The State became sole proprietor of an invention, revoked a stamp duty and a fee for lodging an application and for issuing a certificate.

The period between 1917 and 1921, which saw overthrowing of a tsar, abolishment of the Russian empire and new annexation of Georgia by the Soviet Russia, was not marked by much of inventive activity.

The years that followed were known for the so–called new economic policy. In 1924 a decision was passed concerning the patented

inventions. The patent holders were granted the right to make use of inventions at their disposal. The author of invention would enter into an agreement with an enterprise and would receive as a bonus of 15–30% of economic surplus (income) raised through the sales of the product manufactured by using the invention. The total profit raised by using the invention was split into three equal portions among the stakeholders in the patent game – the state, the enterprise and the inventor, while tax was collected after the industrial use of an invention. Some authors believe that no other country in the world had such a system of bonuses and tax benefits to promote the intellectual property (creativity). As for the USSR, according to the laws on inventions of that time, lodging of application for invention was free of charge, the term for initial review and for receipt of a response from Moscow was 6 months, and in the event of positive decision and issuance of relevant certificate, it would be accompanied by a bonus pay of 200 roubles.

Georgia declared independence in 1991, which also marked the beginning of a new era in the field of inventions. Georgia's National Centre of Intellectual Property – Georgian Patent – was established in 1992. The first guideline documents were adopted enacting the approval and introduction of statute on inventions and industrial models, including 1992 resolutions No. 302 and 303 of the Cabinet of Ministers of the Republic of Georgia. As noted earlier, in 1999 the Patent Law of Georgia was adopted and remains in effect to date (the Law underwent significant changes as a result of 2010 amendments).

Number of applications peaked during 1992–1994, then gradually decreased and has remained at a certain low level for a while. This can be partially explained by the influence, still experienced mentally by the inventors, associated with the environment that was favourable to the inventors, where intellectual products at least had some value. The situation is similar with the patents. The statistical data on the patents which have been adopted and implemented in practice would have been informative in this respect; however no such information is available yet, at least we do not have access to any.

Today Georgia is a member of the World Trade Organization (WTO) established in 1993. Hence the UN–approved requirements of the World Intellectual Property Organization (WIPO) related to the intellectual property are binding upon Georgia, as are the requirements pertaining to the industrial property (1.), as adopted at the Paris conference as early as 1883 (the Paris Convention for the Protection of Industrial Property). One important attachment to the WTO founding charter is the Agreement on Trade–Related Aspects of Intellectual Property Rights (TRIPS), which upholds, among others, the principle that

intellectual property protection should contribute to technical innovation and the transfer of technology.

Let us now have a look at the Georgian way of protection of intellectual property. The 1999 Patent Law has hardly introduced any changes to the area of inventions, either in terms of their use or legal protection. The Law, namely its article 6, contains general statement that the scope of legal protection of an invention will be determined by the invention claim.

It therefore appears that starting from 1800 to 1999, or for two centuries, there has existed some mechanism for encouragement or promotion of inventions. Then what seems to be a problem today? Should we consider resurrecting the Lenin's decree? Current Patent Law greatly differs from the ideas and considerations issued back in 1991. (4.)

We often use the terms – intellectual property and industrial property. Industrial property (3.) is one of the areas of intellectual property, the subject of which are the fruits of human intellectual work. It is the fruit of intellectual work that is being ignored today in the country, where the author of an invention works and delivers intellectual product and ultimately pays cash for his/her own work, because otherwise the invention will not be patented. Thereafter unless the authors of invention continue to pay fees annually to secure their rights in respect of their inventions, the patent, i.e. the fruits of their labour will be revoked.

Technically, a patent is a property of an inventor, although in reality the invention belongs to the Georgian Patent, i.e. the State rather than to the patent holder, which means that the intellectual property is taxable in Georgia. Under the circumstances, know–how could also be taxable, because it is also a property! We believe that in order to achieve progress in this matter, in the first place, the law needs to be revised in a manner as to encourage wide range of people to engage in creative work. The law must also provide for incentives for the initial form of intellectual product – invention idea or proposal, all the way through its practical application, as practiced by the Japanese some time ago and as it is still practiced in many countries. The invention idea is a mental integration of verities that is ready for practical realization (7.). Once an invention idea takes the form of a patent, then the law must regulate the profit gained from the implementation of the invention and its distribution. Article 27 of the Universal Declaration of Human Rights states explicitly that everyone has the right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

As far as Georgia's Patent Law is concerned, it must be focused on the advancement of national economy, instead of market economy, as advised by the father of the Japanese industrial revival – the American scientist W. Edwards Deming.

To conclude, we believe that Georgia's Patent Law needs further improvements, as the improved law is likely to contribute to the intellectual property in Georgia and leads to significant reduction in a number of disputes in the given field.

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Kopsavilkums

Rakstā apskatīta intelektuālā īpašuma pamatīpašības un nozīme Gruzijā. Jautājums ir ļoti interesants gan no teorētiskā, gan praktiskā viedokļa. Patentu likums Gruzijā tika pieņemts 1999. gadā un kopš tā pieņemšanas tajā ir veiktas daudzas izmaiņas. 2010. gada grozījumu rezultātā Likums tika būtiski uzlabots. Vispār intelektuālais īpašums ir tiesību joma, kas reglamentē un nosaka īpašuma tiesības un personiskās nemateriālās tiesības radošās darbības jomā. Lai izpētītu šos jautājumus, raksts atsaucas uz vairākiem iepriekšējiem pieņēmumiem, vēsturisko kontekstu un iepriekšējo pieeju. Daži autori izmanto terminu „patentu piramīda", salīdzinot to ar kazino, kur trīs personas ir iesaistītas valsts vai dažreiz pat starpvalstu novatoriskajā procesā. Rakstā šis jautājums apskatīts saistībā ar Gruziju. Gruzija pasludināja savu neatkarību 1991. gadā, kas iezīmēja arī jaunas ēras sākumu izgudrojumu jomā. Gruzijas Valsts intelektuālā īpašuma centrs – Gruzijas patents – tika izveidots 1992. gadā. Gruzija ir dalībniece Pasaules tirdzniecības organizācijā (PTO), kas izveidota 1993. gadā. Tādēļ ANO apstiprinātās Pasaules intelektuālā īpašuma organizācijas (WIPO) prasības, kas saistītas ar intelektuālo īpašumu, ir Gruzijai saistošas, un šajā gadījumā ietver prasības, kas attiecas uz rūpniecisko īpašumu.

Vārdnīcas glosārijā par intelektuālo īpašumu, intelektuālais īpašums tiek definēts kā tiesību joma, kas nosaka un aizsargā īpašumu un personiskās nemateriālajām tiesības radošās darbības jomā. Lai izpētītu apskatāmo jautājumu, mums šķiet interesanti atsaukties uz vairākiem iepriekšējiem pieņēmumiem, vēsturisko kontekstu un iepriekšējo pieeju. Daži autori izmanto terminu „patentu piramīda", salīdzinot to ar kazino, kur trīs personas ir iesaistītas valsts vai dažreiz pat starpvalstu novatoriskajā procesā.

Pirmā persona ir izgudrojuma autors vai patenta īpašnieks, kurš iesaistās spēlē ar divkāršu likmi: patentējamā ideja un patentmaksa. Ir skaidri redzama saikne starp naudu un radošumu. Radošā brīvība katrā ziņā ir laba lieta, taču tai bieži nāk līdzi brīvība bez naudas, lai gan izgudrojuma autors, kam ir īpašas tiesības izmantot savus jaunievedumu maksā nodevu valstij, kas darbojas kā šo tiesību aizsargātāja. Valsts izmanto šo naudas summu, lai veicinātu paātrinātu un plašu patenta īpašnieka izgudrojuma realizāciju.

Otrā persona ir uzņēmums, kas ideju pārvērš par konkurētspējīgu preci, uzņemot risku uz sava rēķina.

Trešā persona ir valsts vara kā valsts pārvaldes iestāde un baņķieris, kas nosaka spēles noteikumus, izmantojot patentu iestādi, un cenšas „iegūt lielo laimestu".

Starp citu, šie tā sauktie spēles noteikumi tiek labi ievēroti Gruzijas Patentu likumā: Gruzijas Patenta budžetu apstiprina Gruzijas Patenta priekšsēdētājs, saskaņojot ar valsts premjerministru.

Daži autori raugās uz apskatāmā jautājuma vēsturisko kontekstu saistībā ar Gruziju kā daļu no Krievijas impērijas kopš 1801.gada:

- 1812. gadā tika publicēts manifests par izgudrojumiem, kurā tika reglamentētas izgudrotāju tiesības un privilēģijas, un veicināta rūpnieciskā īpašuma attīstību un nostiprināšana;
- 1826. gadā tika izstrādāts jauns likums par izgudrojuma privilēģijām;
- 1870. gadā tika pieņemts jaunais Patentu likums;
- 1879. gadā atkal parādījās problēmas, kas saistītas ar izmaiņām tiesību normās par izgudrojumiem vai patentu īpašnieku privilēģijās, bet 1896. gadā valdība pieņēma pozitīvu lēmumu par šo jautājumu;
- 1919. gadā Vladimirs Ļeņins parakstīja dekrētu, kas atcēla Krievijas caristes patentu tiesību aktus un izveidoja sociālistisko izgudrojumu aizsardzības formu – autorapliecību. Valsts kļuva par vienīgo izgudrojuma īpašnieci, atcēla valsts nodevu un maksu par pieteikuma iesniegšanu un apliecības izsniegšanu.

Laikā no 1917. līdz 1921. gadam, kad tika gāzts cars, likvidēta Krievijas impērija un notika jauna Gruzijas aneksija no Padomju Krievijas puses, netika atzīmētas daudzas aktivitātes izgudrojumu jomā.

Un noslēgumā raksta autori uzskata, ka Gruzijas Patentu likumu ir nepieciešams vēl pilnveidot, jo uzlaboti tiesību akti var veicināt intelektuālo īpašumu Gruzijā un būtiski samazināt strīdu skaitu šajā jomā.