



Legal regime of inventions

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ABSTRACT

The article discusses the issues of determining the legal regime of inventions under the legislation of the Republic of Uzbekistan. The analysis of the types of inventions common in practice and their legal characteristics is carried out. The author comes to the conclusion that a unified approach to the definition of the concept and features of inventions has not yet been formed in science.

Keywords:

Invention, law, model, method, substance, product, device, technical solution.

As a result of studying the need to analyze the issues raised on the topic of this study in a relatively new reality, it should be noted that attempts have been made to give the subject a number of concepts in extensive research work. Such attempts, in turn, can be seen as a desire for a unified approach to what may or may not be recognized as an "invention" [1], without subjective opinions regarding objects of industrial property. Nevertheless, so far no concept of an object of industrial property has been recognized as unified, concrete and complete. [2]

There are cases when researchers, based on the study of the nature of the invention, pay special attention to its individual aspects, noting the legal, technical, economic, social significance [3]. In any case, it is necessary that the invention is always expressed as a technical solution, which is the product of human creative activity.

Article 6 of the Law of the Republic of Uzbekistan "On Inventions, Utility Models and Industrial Designs" in a new edition provides that a technical solution in any field related to a product (in particular, a device, substance, strain of a microorganism, plant or animal cell culture) and a method (process of performing

actions on a material object) is recognized as an invention with the help of material means).

From this it can be seen that getting the invention under legal protection is directly related to the technical solution. The technical characteristic of the invention is confirmed by the divided technical result, which is supposed to be achieved as a result of the invention. [4]

The condition of patentability of an invention means its full compliance with the requirements imposed by the legislator in this regard. Article 6 of the Law of the Republic of Uzbekistan "On Inventions, Utility Models and Industrial Designs" in a new edition establishes this requirement:

- novelty of the object;
- possession of a degree of ingenuity;
- possibility of industrial application. [5]

The essence of these requirements is that if an invention is not known from the level of technological progress, it is considered new. The level of technological progress includes any information that was made public in the world before the priority date of the invention. At the same time, the level of technological progress includes all patent applications for inventions, utility models and industrial designs patented in the Republic of Uzbekistan. [6]

The public disclosure of information related to the invention by the author, the applicant or any person who has received this information from them directly or indirectly is not recognized as a circumstance affecting the recognition of the patentability of the invention if the application for the grant of a patent for the invention is filed with the agency within no more than six months from the date of disclosure of information. At the same time, the burden of proof of this case lies with the author, the applicant.

If an invention is not obvious from the data on the level of technological progress, it will have a degree of ingenuity. When determining the novelty of an invention, patent applications filed and not withdrawn earlier are also taken into account. [7]

The industrial applicability of the invention lies in the fact that if it can be used in industry, agriculture, healthcare and other socio-economic spheres, it is considered suitable for industrial use.

Article 6 of the Law of the Republic of Uzbekistan "On Inventions, Utility Models and Industrial Designs" in the new edition establishes that the invention is not recognized as:

- scientific theories and mathematical methods;
- methods of organization and management;
- conventions, schedules, rules;
- rules and methods of performing mental operations;
- algorithms and programs for electronic computers;
- projects and layouts of buildings, structures, territories;
- solutions concerning only the appearance of products aimed at satisfying aesthetic needs;
- topology of integrated circuits;
- plant varieties and animal breeds;
- decisions contrary to public interests, principles of humanity and morality.

We believe that there are two obvious problems with objects that are not legally recognized as inventions. [8]

Firstly, it confuses methods that are close to some objects from this list, as a result of which it can be confused with an invention. For example, it's no secret that patents for business organization and management are being issued today.

Secondly, a number of objects that did not meet the requirements of the invention were overlooked. In particular, discovery, solutions that only information can offer, etc.

Objects that are not inventions specified in Article 6 of the above law serve to determine which objects are not considered inventions in cases of filing an application for a patent for the object of the invention. [9]

The essence of the invention as a technical solution is expressed in the sum of its essential features that ensure the technical result achieved by the means of the invention. The totality of these essential features is the basis expressing the essence of the invention, as well as its description.

An important feature of the invention are the features that affect the achieved technical result. That is, it is expressed in a causal relationship with the technical result. In turn, non-essential signs are signs that do not affect the achieved technical result.

The technical result is a technical effect, phenomenon, property, etc., which has an objective effect on the implementation or manufacture of the method or on the use of the product, including that obtained by the method embodied in the invention. [10]

The result obtained is not considered technical if it is:

- the result is achieved as a result of compliance with a certain procedure when carrying out certain types of activities on the basis of an agreement between the parties or according to established rules;

- the result expressed in obtaining this or that information as a result of using a direct mathematical method, a program created for a computer, or an algorithm in it;

- the result determined by the properties of the content expressing the meaning of the information expressed in a material medium in one form or another;

a result that has the character of being busy with something or showing.

As a rule, not every invention turns out to be spontaneous. A similar technical solution designed to solve a specific problem may exist before the creation of a new invention [11]. Consequently, there is the concept of "analogue of the invention", which refers specifically to someone who performs such a task that the invention or utility model can be aware of the data open to everyone before the priority date of the invention.

If the invention relates to a method for obtaining a mixture of unknown composition with a certain property or biological activity, then as an analogue, a method for obtaining a mixture with just such a property or biological activity should be indicated.

If the invention relates to a method for obtaining a new, including a high-molecular chemical compound, then information is provided about its known structural analogue or an analogue with such a property.

A strain of a microorganism, as an analogue of the invention relating to plant or animal cell types, is designated by a well-known strain of a microorganism, plant or animal cells having such a property.

Each object of the invention, which is under legal protection, allows you to identify this object by its specific characteristics.

The main attention is paid to the fact that an invention is a technical solution of a product and method in any field. Therefore, the study of each of them is mandatory. It refers to a device, substance, strain of a microorganism, type of plant or animal cells as a product. [12]

Unified technology is the result of innovative activity expressed in an objective form, including inventions, utility models, industrial designs, impact programs or a particular set of legally protected results of intellectual activity in accordance with the provisions on intellectual property of the Civil Code, as well as serving as a technological basis for specific practical activities.

In our opinion, the artificial unification of a number of objects under a common definition and name does not generate a new concept. In any case, it is necessary first of all to resolve the

issue of objects of civil law. At the same time, each object requires its own legal regime, law and order. Along with the adoption of a separate legislative act in this regard, it is necessary to determine the issues of practical implementation, conditions of commercial turnover.

N. Imomov [13] believes that nanotechnology can be considered a new and unique object of intellectual property. This indicates the need to develop and adopt a special regulatory legal act dedicated to nanotechnology. At the same time, it is proposed not only to adopt a legislative act, but also to develop a charter, which will initially be approved by the government, and to fix in it the concept of nanotechnology, their legal description, the scope of objects, the procedure for registration for legal protection, provisions on relations related to their practical application, social security issues, as well as liability issues.

We believe that it is not enough to name each intellectual property object with a new name or to adopt separate legislation. In this case, nanotechnology, genetic engineering, a genetically modified object, artificial intelligence, a computer virus, a strain of a microorganism, a neural system and other objects must be adopted by a separate law.[14] While in the common law system, these objects correspond to the legal regime of an invention, utility model or industrial design, or belong to the intellectual property regime [15].

The product is a device. A device means a structure and objects. The design refers to a specific device, structure, mechanism, as well as a design with such a device, the composition and mutual arrangement of machine parts.

A commodity, together with the concept of a commodity, is understood to be a thing that is the result of human labor. [16] However, one cannot ignore the fact that in this place these results are not always exclusively human activity. For example, an object, a thing, a creative result, etc., obtained with the help of artificial intelligence.

It is the device that is a common object of invention and covers an unlimited range of

objects surrounding it both in production and in people's everyday life. [17]

The device includes a machine and its parts, devices, apparatuses, devices, objects that serve as tools and fasteners, containers and packaging, vehicles, dishes, furniture, shoes, communications equipment, building structures, buildings, structures and their parts, etc.

The question arises – why is this kind of invention as a device relatively common? To answer this question, it is necessary to pay attention to the fact that an invention under patent protection is really protected, and there is a possibility of actually establishing the fact of its use. It is easier to establish the fact of using the device than to establish the fact of using the method [18]. Because the device can be found in any market, store, advertising media, etc. The procedure for acquiring the object of this invention with additional technical characteristics is also provided. For example, in the contract of sale, the seller's obligation to deliver the goods with the necessary documents, etc.

However, it is somewhat difficult to determine and prove the method of invention. To do this, first of all, it is required that the copyright holder has certain information about whether this method is used at any enterprise or workshop. In addition, entry to this organization may be prohibited, and outsiders are unlikely to enter. [19] To prove the fact of using the method of invention, it is necessary to provide a reliable document in the form of a technological instruction, which may not be known to everyone. This circumstance also complicates the establishment of the fact of using the method of invention. [20]

The peculiarity of the device is manifested in:

- the presence of structural elements;
- the presence of relationships between the elements;
- mutual arrangement of elements;
- the form of execution of an element or a complete device, including a geographical form; [21]
- properties and other aspects of the elements, as well as their relationship;

- the material from which the element or complete device is made;

- the environment that performs the functions of the element.

Separately, it should be noted that when expressing the properties of a device, it is impossible to use symbols that do not affect the use of the device and the implementation of its functions, which are present in the device itself as a whole or in an element (a word, an image or a complex of its symbols) [22].

The product is a substance. A substance is a chemical compound that includes nucleic acid and proteins, compositions (composition, mixture), products of nuclear transformations. [23]

Compounds also include high-molecular compounds, including objects of genetic engineering (plasmid, vector, nucleic acid, recombinant molecule and fragments of nucleic acids).

In particular, the following features are used to describe individual chemical compounds:

for low—molecular compounds with a given structure - a qualitative component (atoms of certain elements) [24], a quantitative composition (the number of atoms of each element), the mutual arrangement of atoms expressed through a bond and their chemical structural formula in a molecule;

for high-molecular compounds with a given structure, the chemical composition and structure of one link of the macromolecule, the structure of the macromolecule as a whole (linear, branched) [25], the frequency of links, molecular weight, molecular distribution, geometry and stereometry of the macromolecule, groups at its ends and next to them [26];

for individual compounds with an indeterminate structure – physico-chemical and other characteristics necessary to distinguish this compound from others (including signs of the method of preparation); [27]

the nucleotide sequence (in the case of fragments of nucleic acids) or the natural map (in the case of recombinant nucleic acids and vectors) for individual compounds related to products of genetic engineering, the amino acid

sequence and other physico-chemical characteristics necessary to distinguish this compound from others. [28]

Composition refers to compositions containing at least two ingredients. These are alloys, ceramic, glass, concrete mixtures, mechanical mixtures for various purposes. In most cases, their quantitative indicators are important. [29]

When applying for any new substance, it is required to disclose the method of obtaining it. The following features are distinguished as a compositional feature:

- qualitative composition (ingredient);
- quantitative composition (presence of an ingredient);
- compositional structure;
- the structure of the ingredient. [30]

When specifying the properties of a composition whose composition is unknown, its physico-chemical, physical and utilitarian indicators, as well as signs of the method of its preparation, can be used [31].

When specifying the properties of a substance obtained as a result of nuclear transformation, one should proceed from the following signs;

- qualitative composition (isotope of the element);
- quantitative composition (number of protons and neutrons);
- basic nuclear properties: the type and energy of radiation (for radioactive isotopes) are used.

To characterize individual strains of microorganisms, in particular, the following signs are used:

- family and species name of the variety (in Latin) [32];
- origin (source of allocation, pedigree);
- gene and chemotaxometric characteristics [33];
- morphological, physiological (including cultural) characteristics;
- biotechnological characteristics (growing conditions; name and property of the useful substance obtained from the strain; degree of activity (productivity);
- virulence, antigenic structure, serological properties (for strains of

microorganisms in medicine and veterinary medicine);

the principle of hybridization (for strains of hybrid microorganisms) [34].

To characterize the cell lines of plants or animals, in particular, the following features are used:

- the number of passages;
 - karyological characteristics;
 - growth (kinetic) characteristics;
 - characteristics of cultivation in the animal's body (for hybrids);
 - ability to morphogenesis (for plant cells).
- [35]

To characterize consortia of microbial, plant or animal cells, in addition to the above features, the following features are used: factors and conditions of selection and adaptation, taxonomic composition, number and predominant components, type and physiological characteristics of the consortium as a whole [36].

Certain features are used for the appropriate characterization of genetic constructs (in this case, the structural elements can be an enhancer, a promoter, a terminator, an initiating codon, a linker, a gene fragment, a marker).

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