

DOI: <https://doi.org/10.33994/kndise.2020.65.61>
УДК 343.98

Andrii Vitaliyovich Kofanov
PhD of Juridical Sciences, Associate Professor,
Professor of Department of Forensic Support and Forensic Expertise

ORCID ID 0000-0002-5242-2518
E-mail: kofanov_andrey@ukr.net

Nataliia Volodymyrovna Pavlovska
PhD of Juridical Sciences, Associate Professor,
Professor of Department of Civil Law and Process

ORCID ID 0000-0003-3311-0364
E-mail: wwwpav@gmail.com

Oleksii Volodymyrovych Romanenko
PhD in Law, Professor of the Department of Criminal Law

ORCID ID 0000-0002-3553-4577
E-mail: ovromanenko2017@gmail.com

National Academy of Internal Affairs

Halyna Oleksandrivna Strilets
PhD of Judicial Sciences, Associate Professor of the Department of Law
of Prydnai Branch

ORCID ID 0000-0002-1067-0820
E-mail: galinastrelets2018@gmail.com

Natalia Andriivna Filipova
Asistant of the Department of Law of Prydnai Branch

ORCID ID 0000-0001-7132-8343
E-mail: filinatalja2310@gmail.com

*Private Joint Stock Company "Higher Educational Institution of
Interregional Academy of Personnel Management"*

PROBLEMS OF APPOINTMENT AND CONDUCT OF FORENSIC EXAMINATIONS IN THE FIELD OF INTELLECTUAL PROPERTY

Intellectual property today is a powerful factor in progress, which largely determines the trends of the modern world. Therefore, the protection of intellectual property rights is one of the most important tasks of the state and society, which seeks to take a worthy place in the world community.

The purpose of the article is to study the problem issues regarding the appointment of forensic examinations in the field of intellectual property and analysis of the ways of their solution.

The urgency of the study is due to the rapid increase in the number of unlawful actions in the field of intellectual property.

The study was conducted on the basis of the method of system analysis and generalization of information obtained during the survey conducted by the category of investigators who carry out pre-trial investigation of unlawful actions against the objects of intellectual property, as well as reports from the Ministry of Internal Affairs of Ukraine and the National Police of Ukraine for 2012, 2016-2018 years.

The changes in the legislation regulating legal relations in the field of intellectual property are analyzed, as well as the correlation of state and non-state special expert institutions performing expert research on intellectual property objects. The key issues that will contribute to improving the quality of both the research itself and the overall investigation process are outlined.

Key words: *intellectual property, forensic examination, expert, infringement, remedies*

Intellectual property rights are valuable business assets. Protection of intellectual property rights are those measures that are applied in cases where the rights to this or that object of intellectual property are violated or challenged [7]. In accordance with the norms of the current legislation of Ukraine, it provides for the activities of authorized state institutions [12] for the recognition, renewal of rights, as well as the removal of obstacles that are on the way of exercising the rights and legitimate interests of subjects of law in the field of intellectual property [17]. This activity is carried out in accordance with the procedure established by the legislation, that is, using the appropriate form, means and methods of protection. It should be noted that the protection of intellectual property rights in the court is the most effective and effective to establish the truth.

Properties and specifics of intellectual property objects determine certain features of the procedure for resolving disputes [19; 20; 21], related to legal relationships that arise in the process of creating and using these objects.

The peculiarity of such disputes is that they usually relate to special (including technical) issues that require special expertise in various fields of science and technology. That is, they can not be solved without the use of special knowledge in a particular scientific or technical field and, accordingly, involve the involvement of forensic experts.

As practice has shown, effective protection of intellectual property rights and forensic expertise are concepts that are indivisible. The vast majority of intellectual property cases relate to the activities of business entities in the field of social production, and, accordingly, are considered by economic courts, which in turn are guided by the Commercial Procedure Code of Ukraine (hereinafter – CPC of Ukraine), the Law of Ukraine «On Forensic Examination», etc. In the composition of commercial courts, there are boards on intellectual property, and in the Appeal and Supreme Commercial Court – chambers to consider such disputes. Offenses concerning intellectual property objects are

regulated by the norms of the Criminal Code of Ukraine, the Criminal Procedure Code of Ukraine and the Civil Procedure Code of Ukraine.

The system of protection of rights and freedoms is provided by providing the legislator with equal rights to collect and submit to the court files, documents, other evidence, petitions and complaints, other implementation of their procedural rights, provided by the Criminal Procedure Code of Ukraine, including the right to involve an expert for the examination, which has undergone significant reformation with the introduction of a new Criminal Procedure Code of Ukraine of Ukraine. The main place in this system of protection of rights and freedoms is the competition of the parties and the freedom to submit their evidence to the court and bring to the court their convictions.

The analysis of the dynamics of updating the legal framework of Ukraine on intellectual property rights and a number of measures of executive authorities indicate that the main tasks of the present day are to bring national legislation on the normalization of the activities of domestic collective management organizations in accordance with the provisions of the legislation of the European Union, as well as the creation of an effective system of forensic institutions for research on intellectual property in various departments, in particular, in the Ministry of Internal Affairs, the State Department of Intellectual Property, etc.

It should also be noted that in Art. 6-1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 states that in defining their civil rights and obligations (and security documents on intellectual property rights are provided by civil rights), every person is guaranteed fair and public hearing by an independent and impartial tribunal. Therefore, when considering disputes in the field of intellectual property, a systematic approach should be applied, the essence of which, in accordance with the constitutional guarantee of justice, consists in qualified examination of such cases with the involvement of specialists in the relevant fields of science and technology.

Involving an expert [10] and conducting forensic examinations is a special form of obtaining information provided for by law by means of conducting research by persons who have special knowledge in the field of science, technology, art, crafts and certain spheres of human activity.

The essence of the examination is to conduct an expert (research) study on the basis of special knowledge of the material objects of phenomena and processes, which contain information about the circumstances of the case, which is in the conduct of organs of pre-trial investigation or court.

As you know, the basic principles of forensic expertise, in particular, its organization, the legal status of a judicial expert, the provision of the work of state specialized institutions and departmental expert services, etc., are determined by the Law of Ukraine «On Forensic Examination», other legislative acts, departmental legal documents. The procedure for the appointment of forensic examinations, expert studies and scientific and methodological recommendations on the preparation and appointment of forensic examinations are set out in the Instruction on the appointment and conducting of forensic examinations and expert studies and scientific and methodological

recommendations on the preparation and appointment of forensic examinations and expert studies approved by the order of the Ministry Justice of Ukraine from January 8, 1998 No. 53/5 (hereinafter referred to as the Order).

The procedural grounds for the examination are defined in Art. 242 of the Criminal Procedure Code of Ukraine. According to part one of this article, the expert examination is conducted by the expert at the request of the party to the criminal proceedings or on the instructions of the investigating judge or the court, if special knowledge is necessary to clarify the circumstances relevant to the criminal proceedings. The actual reason for the appointment of an examination is the need for scientific, technical or other specialist knowledge that is required to resolve certain issues in criminal proceedings. It should be borne in mind that the special does not include well-known and generally available scientific knowledge in the field of material and procedural law, which should be held by investigators, prosecutors, judges. That is why the law explicitly prohibits conducting an examination to find out the issues of law.

However, it should be noted that with the adoption of new procedural legislation in the field of expertise of intellectual property objects, there have been significant changes, which, first of all, concern the order of appointment of expertise [1].

The parties to the case have the opportunity to independently request an examination and file it with the court together with other types of evidence. Thus, Article 69, paragraph 2 of the Commercial Procedure Code of Ukraine, Article 72, paragraph 2 of the Civil Procedure Code of Ukraine, Article 68, paragraph 2 of the Code of Administrative Justice of Ukraine, as amended, is worded as follows: «The expert may be appointed by a court or involved in the case», and Article 98, paragraph 3 of the Commercial Procedure Code of Ukraine, paragraph 3 of Article 102 of the Civil Procedure Code of Ukraine, and Article 101, paragraph 3 of the Code of Administrative Proceedings of Ukraine stipulate that «The expert's opinion may be provided on request (appeal) to the participant in the case or on the basis of a court order regarding the appointment of an examination» (Fig. 1). According to practice, expertises in the field of intellectual property are appointed on the application – 90 %:



Figure 1. The ratio of the number of awards and applications from 2017 to 2018

Table 1

Appointment of forensic examinations by appeals (applications) depending on the object of research in the period 2017 and 2018

Source: Information from the Expert Service of the Ministry of Internal Affairs of Ukraine

Type of research		Applications (applications) for forensic examinations in 2017	Applications (applications) for forensic examinations in 2018
in the field of intellectual property		23	31
of them	objects of the copyright (literary, artistic works, computer programs and compilations (databases) of data)	2	4
	objects of related rights (performing phonograms, videograms, programs (broadcasts) of broadcasting organizations)	0	1
	related to inventions and utility models	0	2
	objects of trademarks, commercial names, geographical indications	19	21
	industrial designs	2	3
	economic in the field of intellectual property	0	0

Table 2

Appointment of forensic examinations by awards (decrees) depending on the research object 2016, 2017, 2018

Source: Information from the Expert Service of the Ministry of Internal Affairs of Ukraine

Type of research		Decisions on the appointment of forensic examinations						
		Total 2016	Total 2017	Difference 2016-2017	%	Total 2018	Difference 2017-2018	%
in the field of intellectual property		183	213	30	< 14	223	10	< 4
of them	objects of the copyright (literary, artistic works, computer programs and compilations (databases) of data)	0	108	108	< 100	94	14	> 13
	objects of related rights (performing phonograms, videograms, programs)	0	4	4	< 100	6	2	> 33

Розділ 8. Судова експертиза об'єктів інтелектуальної власності

(broadcasts) of broadcasting organizations)							
related to inventions and utility models	3	2	1	> 33	8	6	< 75
objects of trademarks, commercial names, geographical indications	0	52	52	< 100	59	7	< 12
industrial designs	0	7		< 100	3	4	> 57
economic in the field of intellectual property	51	38	-13	> 25	53	15	< 28

Mentioned in Tab.1 and Tab.2 information shows that the largest number of forensic examinations, which are appointed by appeals (applications) for conducting expert investigations in 2017 and 2018, are conducted in respect of objects of trade marks, commercial names, geographical indications – 68 % of the total in 2018, in its turn, the largest number of expertises, which were appointed by awards (decrees) in the period from 2016 to 2018, are carried out in respect of objects of copyright (literary, artistic works, computer programs and compilations (databases) of data) – 42 % of the total in 2018. There is also a tendency to increase the total number of forensic examinations in the field of intellectual property.

Already, we can see both the positive and the negative consequences of the implementation of new procedure rules.

Among other changes, the positive moment was the shortening of the terms of an examination, since these terms are usually due to the interests of the customer, as reflected in the contracts for the forensic examination. In most cases is from 10 days to 1 month.

Obviously, one of the goals of such an innovation should be to reduce the length of time trial. But in practice, everything happens in a different way.

The possibility of a participant in the case – a customer of the examination to independently to elect an expert for the study and the findings of the conclusion has two sides. The first one – it allows the party to choose an expert whose qualification he/she trusts, who has already proven himself as a professional in his field, and the second – it gives the opportunity to conduct preliminary consultations with an expert in order to obtain a conclusion with the anticipated (necessary side) result.

In the case of an expert examination on the order of the expert side, it is virtually impossible to avoid the influence of the customer during the work. It is clear that when ordering an expert examination, the party expects a positive result for it. The conclusion with the other result simply will not appear in the case. But, as practice shows, in most cases the conclusions are brought to the court by each of the parties, and they are different in essence.

The standard approach used by courts in such cases is the appointment of other forensic examination. But in this case, the term of consideration of the case is substantially getting length, as it is already harder to count on the

efficiency of the experts when the examination is appointed by the court. It is quite natural that in the case when the expert has several examinations at the same time, some of which are appointed by the court, while others are ordered by the participants of the case, the latter will be conducted in the first place, as the parties usually have a limited time to submit the findings to the court. Thus, in general, it can not be unequivocally stated that the possibility of ordering expert examination by the parties leads to shortening of the terms of cases' consideration.

Taking into account also the fact that there are not so many experts in the field of intellectual property (Tab. 3-4), in case of appeal of each party – the participant of the case with an order for conducting an examination, for example, simultaneously with two to three experts, a situation may arise, when the court has virtually no choice as to appoint one of the certified forensic experts to conduct a regular examination in the case.

Table 3

The ratio of the number of certified forensic experts of state expert institutions in the field of intellectual property*

Source: The register of certified forensic experts

A specialist of the state special institution		A specialist of the non-state special institution	
n	%	N	%
82	79	22	21

*Data is from the registry of certified forensic experts as of June 10, 2019, taking into account the validity period of the certificate of the expert (until December 2019) without taking into account the Crimea, the Sevastopol city and also the parts of Donetsk and Lugansk Obalsts, which are temporarily occupied <http://rase.minjust.gov.ua/>

Table 4

Correlation of the number of certified forensic experts of state expert institutions in the field of intellectual property *

Source: The register of certified forensic experts

	n	%		n	%		n	%
Expert divisions of the Ministry of Internal Affairs	39	44	Science and Research Institute of Intellectual Property	6	7	Research Center of Forensic Examination of the Ministry of Justice of Ukraine:	43	49
						Research Institute of Forensic Examination on intellectual propetry	28	65
						Hon. Prof. M.S. Bokarius Kharkiv Research Institute of Forensic Examination	4	9
						Lviv Scientific Research Institute of Forensic Examination	7	16

						Kyiv Scientific Research Institute of Forensic Expertise	3	7
						Odessa Scientific Research Institute of Forensic Examination	1	2

*Data is from the registry of certified forensic experts as of June 10, 2019, taking into account the validity period of the certificate of the expert (until December 2019) without taking into account the Crimea, the Sevastopol city and also the parts of Donetsk and Lugansk Oblasts, which are temporarily occupied <http://rase.minjust.gov.ua/>

To date, many experts in the field of intellectual property generally have doubts about the appropriateness of appointing an examination by a court in the event that an expert examination has already been conducted on an order of one or both parties. Obviously, such a position has the right to exist, but it needs to be adequately understood by judges specializing in such cases. After all, there is no guarantee that the conclusion of the examination appointed by the court will be more qualitative than that provided by the parties. That is, the question of evaluating expert opinions for the court is the foreground.

The essential point is how the questions put by the expert on the research are formulated. Although the subject matter of the case is one and the same, each party to the case may thus articulate the questions so that the answers given to them testify to their benefit in the given case.

Before making changes to the procedure law, each party could ask the court what questions it would like to put to the decision of the court expert and to argue why this should be the formulation of questions, and the court finally made a final decision on the range of issues to be put to the expert when appointing forensic examination. Under the new legislation that regulates the legal relations in the field of protection of civil legal relations, by ordering an expert examination, the party independently formulates questions relating to the study of an expert, which may also lead to the receipt by court of various substantive expert opinions.

Questions to the forensic expert should be formulated precisely, unambiguously and clearly, namely:

- the content of the question should be precisely specified research object;
- formulations that start with multi-valued words should be avoided (in such cases, specification is required);
- it is not allowed to raise issues for examination, the solution of which does not belong to the competence of the expert;
- in the formulation of questions, the use of spoken words should be avoided;
- it is advisable to avoid synonyms, calling the same object of research;
- when formulating the question, all possible versions must be taken into account, and the results of expert research can be substantiated (refuted).

Table 5

**The activity of law enforcement units for crimes in the field of
intellectual property according to various criteria
(2012, 2016, 2017, 2018 years)**

Source: Information from the Ministry of Internal Affairs of Ukraine

	2012	2016	2017	2018
Intellectual property crimes were found:	978	1930	1994	6769
related to violation of copyright and adjoining rights	569	1123	1160	3938
Investigations on criminal proceedings were completed and sent to the court with indictments	662	1307	1350	4581
Identified administrative violations of intellectual property rights and illegal distribution of content	3376	6664	6884	23365
Undisclosed enterprises for the production of counterfeit products have been exposed	125	247	255	865
The activities of unlawful enterprises for replicating counterfeiting and content are discontinued	55	108	112	381
The activities of unlawful enterprises for falsification are discontinued	68	134	139	471

Researches show a significant increase in crimes in the area of intellectual property in 2018 due to the increased activity of law enforcement units in identifying and stopping unlawful actions on violations of intellectual property rights and state policy in general in relation to improving the investment climate in Ukraine, in particular in the area of intellectual property.

Table 6

**Amounts withdrawn in monetary terms
Source: Information from the Ministry of Internal Affairs of Ukraine**

	2012	2016	2017	2018
Removed copies of counterfeit goods for a total amount (million of UAH)	20 000 000	118 440 000	122 340 000	415 260 000
Removed falsified products for a total amount (million of UAH)	23 000 000	136 206 000	140 691 000	477 549 000

A survey of the criminal cases in the sphere of the intellectual property rights has shown that almost 98 % is assigned an examination of the objects of the intellectual property, among others examinations there is the following ratio:

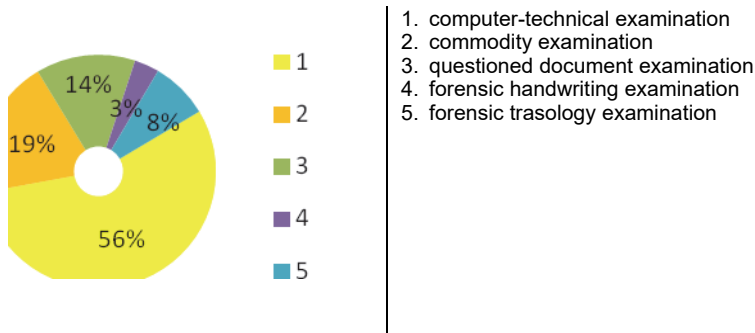


Figure 2. Types of forensic examinations, which are assigned to intellectual property objects

Differentiation of expert institutions, which most often appoint examination of intellectual property objects:

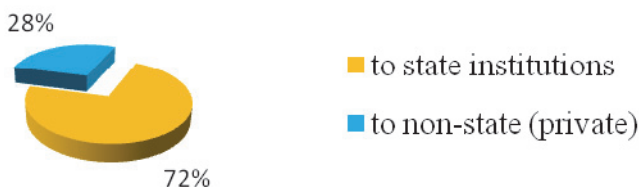


Figure 3. The ratio of appeals to expert institutions for conducting research in the field of intellectual property

At the same time, weaknesses in the attraction of state expert institutions include the weak material base (41 % of respondents) and long time of conducting of examinations (98 % of respondents). The weaknesses of non-state expert institutions are considered by the investigators to be low qualifications of specialists (48 % of respondents) and the need to pay for conducting an expert examination (97 % of those polled).

According to a survey of criminal cases in the field of intellectual property offenses after the opening of criminal proceedings, they are considered as follows:

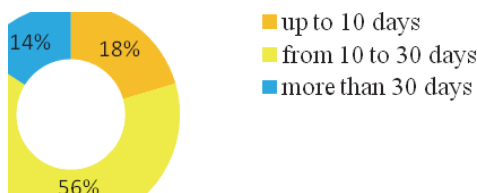


Figure 4. Terms of research in the field of intellectual property

When asked about the expediency of consulting an expert, which materials should be provided for examination, all interviewed investigators responded positively.

Thus, on the basis of the analysis, we can come to the following conclusions.

With the adoption of new procedure legislation, the number of examinations in each case has increased significantly. Most of the issues in the area of intellectual property rights protection from the very beginning of the review include at least two expert opinions, filed by each of the parties to the case. It is clear that these expert opinions contain different results of research, for a number of reasons, among which one can distinguish, such as the incompleteness of materials provided for research, different formulations of questions, and, unfortunately, sometimes expert misconduct takes place, taking into account the influence on it of the interested party.

When investigating crimes related to infringements of intellectual property rights, they often appoint forensic examination of intellectual property (copyright and related rights), forensic examination of documents, commodity examination, that is, those forensic examinations by which to investigate the objects of intellectual property or their packaging. Rarely appoint expert assessments that help to prove the involvement of specific individuals in committing this type of crime (trialogy, handwriting, phonoscopy, etc.). This can be explained, first of all, by the fact that the majority of examinations are imposed on the facts of violation of copyright and related rights in the form of illegal reproduction and distribution of phonograms, videograms, broadcasting programs, computer programs and databases on CDs, video and audio cassettes.

Also, the monopoly of state institutions for carrying out expert examinations in criminal proceedings remains a problematic issue.

Перелік посилань

1. *Гапотченко Г. М.* Окремі питання призначення експертиз за новим Кримінальним процесуальним кодексом України. *Криміналістичний вісник*. 2012. Випуск 2 (18). С. 27-31.
2. *Експерт: парадигми юридичних наук і державного управління: електронне наукове видання: зб.* Київ: Вид-во Ліра-К, 2019. № 3 (5). 266 с.
3. Про судову експертизу: Закон України. URL: <https://zakon.rada.gov.ua/laws/show/4038-12> (дата звернення 10.02.2019).
4. *Інструкція* про призначення та проведення судових експертиз та Науково-методичні рекомендації з питань підготовки та призначення судових експертиз та експертних досліджень, затверджені наказом Міністерства юстиції

References

1. *Hapotchenko, H. M.* (2012). Separate issues of assignment of expertises under the new criminal procedure code of Ukraine. *Forensic Bulletin*. Issue 2 (18). P. 27-31. (In Ukrainian).
2. *Expert: paradigms of legal sciences and public administration: electronic scientific publication.* Kyiv: Lira-K. 2019. No. 3 (5). 266 p. (In Ukrainian).
3. On forensic examination: Law of Ukraine. Retrieved from <https://zakon.rada.gov.ua/laws/show/4038-12>. (In Ukrainian).
4. *Instruction* on the appointment and conduct of forensic examinations and Scientific and methodological recommendations on the preparation and appointment of forensic examinations and expert studies, approved by order of the

України від 08.01.1998 № 53/5 (у редакції наказу Міністерства юстиції України від 26.12.2012 № 1950/5) URL: <http://zakon4.rada.gov.ua/laws/show/z0705-98>.

5. *Кримінальний процесуальний кодекс* України. URL: <https://zakon.rada.gov.ua/laws/show/4651-17> (дата звернення 10.02.2019).

6. *Кофанов А. В., Волошин О. Г., Кравчук О. В.* Криміналістичне дослідження об'єктів інтелектуальної власності: курс лекцій. Хмельницький: ХмЦНП, 2012. 264 С.

7. *Нерсисян А. С.* Кримінально-правова охорона прав інтелектуальної власності: моногр. Хмельницький: Хмельницький ун-т управління та права, 2010. 192 С.

8. *Проблеми теорії та практики судової експертизи з питань інтелектуальної власності* ("Крайнівські читання"): матер. III Міжнар. наук.-практ. конф. (12 грудня 2019 р.м. Київ); за ред. акад. НАПрН України О.В. Скрипнюка і проф. В.Л. Федоренка / НДЦСЕ судової експертизи з питань інтелектуальної власності Мін'юсту. Київ: Вид-во Ліра-К, 2019. 232 С.

9. Про внесення змін до Закону України «Про авторське право та суміжні права щодо діяльності організацій колективного управління»: проект Закону України URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62389.

10. *Репешко П. І., Гузенко В. В.* Процесуальні права та обов'язки судового експерта за кримінальним процесуальним кодексом України 2012 року. 2012. URL: <http://intkonf.org/kand-nauk-z-derzh-upravlinnya-repeshko-p-i-guzenko-v-v-protseualni-prava-ta-obovyazki-sudovogo-eksperta-za-kriminalnim-protseualmit-kodeksom-ukrayini>.

11. *Про затвердження* Плану заходів щодо реалізації Концепції реформування державної системи правового захисту

Ministry of Justice of Ukraine dated 01/08/1998 No. 53/5 (as amended by Order of the Ministry of Justice of Ukraine dated 12/26/2012 No. 1950/5) Retrieved from <http://zakon4.rada.gov.ua/laws/show/z0705-98>. (In Ukrainian).

5. *The Criminal Procedure Code of Ukraine.* Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17>. (In Ukrainian).

6. *Kofanov, A. V., Voloshyn, O. H., Kravchuk, O. V.* (2012). Criminalistic research of intellectual property objects: A Lecture Course. Khmelnytskyi, KhmTSNP, 264 p. (In Ukrainian).

7. *Nersesyan, A. S.* (2010). Criminal law protection of intellectual property rights: Monography. Khmelnytskyi: Khmelnytsky University of Management and Law. 192 p. (In Ukrainian).

8. *Skrypniuk, O. V., Fedorenko, V. L.* (Eds.) (2019). Problems of the theory and practice of forensic expertise on intellectual property issues ("Krainiv readings"): Proceedings of the III international scientific and research practice conference (December 12, 2019, Kyiv)/ NDTSSSE of the Ministry of Justice's of intellectual property. Kyiv: Lira-K. 232 p. (In Ukrainian).

9. On amendments to the Law of Ukraine "On Copyright and Related Rights to the Activities of Collective Management Organizations": Draft Law of Ukraine Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62389. (In Ukrainian).

10. *Repeshko, P. I., Huzenko, V. V.* (2012). Procedural rights and obligations of a court expert under the Criminal Procedure Code of Ukraine in 2012. Retrieved from: <http://intkonf.org/kand-nauk-z-derzh-upravlinnya-repeshko-p-i-guzenko-v-v-protseualni-prava-ta-obovyazki-sudovogo-eksperta-za-kriminalnim-protseualmit-kodeksom-ukrayini>. (In Ukrainian).

11. *On approval of the Action Plan for the implementation of the Concept of reforming the state system of legal protection of*

- інтелектуальної власності в Україні: розпорядження Кабінету Міністрів України. URL: <https://www.kmu.gov.ua/ua/npas/249287204> (дата звернення 10.02.2019).
12. *Росенчук В.* Проблеми розмежування підвідомчості спорів про захист прав на об'єкти інтелектуальної власності. *Актуальні проблеми судового захисту прав інтелектуальної власності в Україні*: матеріали круглого столу. Київ. 2016. С. 29-38. URL: <http://ndiiv.org.ua/Files2/29.01.2016.pdf>.
13. *Судова експертиза* об'єктів права інтелектуальної власності в Україні: навч.-метод. вид.; В. Л. Федоренко (кер.), Л. П. Тимошик, Н. В. Кісіль, Н. М. Ковальова, О. В. Голікова, Т. М. Чабанець та ін.; за ред. проф. В. Л. Федоренка / НДЦСЕ судової експертизи з питань інтелектуальної власності Мін юсту. Київ: Вид-во Ліра-К, 2019. 88 С.
14. *Статистична інформація* про стан злочинності в Україні за 2012, 2016-2018 роки. Офіційний веб-сайт МВС України URL: <https://mvs.gov.ua/>.
15. *Статистичні дані* про кількість експертиз та досліджень, виконаних фахівцями Експертної служби МВС України за 2016, 2017, 2018 роки. Офіційний веб-сайт ДНДЕКЦ МВС України URL: <http://dndec.mvs.gov.ua>.
16. *Про заходи щодо захисту* інтелектуальної власності в Україні: указ Президента України». URL: <https://zakon.rada.gov.ua/laws/show/285/2001> (дата звернення 10.02.2019)
17. *Харченко В. Б.* Кримінально-правова охорона прав на результати творчої діяльності та засоби індивідуалізації в Україні: моногр. Харків: ХНУ ім. В. Н. Каразіна, 2011. 480 С.
18. *Харченко В. Б.* Порушення кримінального провадження щодо незаконного обігу дисків для лазерних систем зчитування за новим кримінальним процесуальним кодексом intellectual property in Ukraine: Order of the Cabinet of Ministers of Ukraine. Retrieved from <https://www.kmu.gov.ua/ua/npas/249287204>. (In Ukrainian).
12. *Rosenchuk, V.* (2016). Problems in the delimitation of the jurisdiction of disputes on the protection of intellectual property rights. *Topical issues of judicial protection of intellectual property rights in Ukraine*: Round table proceedings. Kyiv. P.29-38. Retrieved from <http://ndiiv.org.ua/Files2/29.01.2016.pdf>. (In Ukrainian).
13. *Fedorenko, V. L.* (Ed.) (2019). Forensic Examination of intellectual property rights in Ukraine: A training methodological edition/ NDT SSE of the Ministry of Justice's of intellectual property. Kyiv: Lira-K. 88 p. (In Ukrainian).
14. *Statistical information* on the state of crime in Ukraine for 2012, 2016-2018. Official website of the Ministry of Internal Affairs of Ukraine. Retrieved from <https://mvs.gov.ua/>. (In Ukrainian).
15. *Statistical data* on the number of examinations and studies performed by experts of the Expert Service of the Ministry of Internal Affairs of Ukraine for 2016 2017, 2018. Official site DNDEKTS of the Ministry of Internal Affairs of Ukraine. Retrieved from <http://dndec.mvs.gov.ua>. (In Ukrainian).
16. *On measures* for the protection of intellectual property in Ukraine: Decree of the President of Ukraine." Retrieved from <https://zakon.rada.gov.ua/laws/show/285/2001> (In Ukrainian).
17. *Kharchenko, V. B.* (2011). Criminal protection of rights to the results of creative activity and means of individualization in Ukraine: monography. Kharkiv. 480 p. (In Ukrainian).
18. *Kharchenko, V. B.* (2012). Violation of criminal proceedings concerning illicit circulation of disks for laser reading systems under the new criminal procedural code of Ukraine. *Bulletin of the Kharkiv National*

України. *Вісник Харківського національного університету імені В.Н. Каразіна*. 2012. № 12. С. 246-249.

19. Maheshwari, A. Arbitration & Intellectual Property – Lex Mantis, Legal Era, 2013. P. 40-43. URL: www.legalera.in.

19. Maheshwari, A. (2013). Arbitration & Intellectual Property – Lex Mantis, Legal Era. P. 40-43. Retrieved from www.legalera.in. (In English).

20. Paul E. G. International Intellectual Property, Conflicts of Laws, and Internet Remedies. *Journal of Intellectual Property Rights*. 2005. Vol. 10. P. 133-140. URL: <https://www.niscair.res.in/sciencecommunication/researchjournals/rejour/jipr/Fulltextsearch/2005/March%202005/JIPR-vol%2010-March%202005-pp%20133-140.htm>.

20. Paul, E. G. (2005). International Intellectual Property, Conflicts of Laws, and Internet Remedies. *Journal of intellectual property rights*. Vol. 10. P. 133-140. Retrieved from <https://www.niscair.res.in/sciencecommunication/researchjournals/rejour/jipr/Fulltextsearch/2005/March%202005/JIPR-vol%2010-March%202005-pp%20133-140.htm>. (In English).

21. Somnath De. The Use of Dispute Resolution to Resolve Intellectual Property Conflicts – A Survey of Emerging Trends and Practices. HNLU Paper Series, Forthcoming. Symbiosis Law School, Pune, 2012. P.1-10. <http://dx.doi.org/10.2139/ssrn.2062993>.

21. Somnath, De. (2012). The Use of dispute resolution to resolve intellectual property conflicts – A Survey of Emerging Trends and Practices. HNLU Paper Series, Forthcoming. Symbiosis Law School, Pune. P.1-10. Retrieved from <http://dx.doi.org/10.2139/ssrn.2062993>. (In English).

ПРОБЛЕМИ ПРИЗНАЧЕННЯ І ПРОВЕДЕННЯ СУДОВОЇ ЕКСПЕРТИЗИ В СФЕРІ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ

А. В. Кофанов
Н. В. Павловська
О. В. Романенко
Г. О. Стрілець
Н. А. Філіпова

Інтелектуальна власність сьогодні є потужним фактором прогресу, який багато в чому визначає тенденції сучасного світу. Тому захист прав інтелектуальної власності є одним з найважливіших завдань держави і суспільства, яке прагне зайняти гідне місце в світовому співтоваристві.

Метою статті є вивчення проблемних питань призначення судових експертиз у сфері інтелектуальної власності та аналіз шляхів їх вирішення.

Актуальність дослідження обумовлена швидким збільшенням кількості протиправних дій у сфері інтелектуальної власності.

Дослідження проводилося на основі методики системного аналізу і узагальнення інформації, отриманої в ході проведеного опитування категорії слідчих, які здійснюють досудове розслідування протиправних дій щодо об'єктів інтелектуальної власності, а також звітів МВС України та Національної поліції України за 2012, 2016-2018 роки.

Проаналізовано зміни в законодавстві, що регулює правовідносини в сфері інтелектуальної власності, а також взаємозв'язок державних і недержавних спеціальних експертних установ, які здійснюють експертні дослідження об'єктів інтелектуальної власності. Визначено ключові питання, які сприятимуть підвищенню якості як самого дослідження, так і всього процесу дослідження в цілому.

Ключові слова: інтелектуальна власність, судова експертиза, експерт, порушення, засоби правового захисту

ПРОБЛЕМЫ НАЗНАЧЕНИЯ И ПРОВЕДЕНИЯ СУДЕБНОЙ ЭКСПЕРТИЗЫ В ОБЛАСТИ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ

**А. В. Кофанов
Н. В. Павловская
А. В. Романенко
Г. А. Стрилец
Н. А. Филиппова**

Интеллектуальная собственность сегодня является мощным фактором прогресса, который во многом определяет тенденции современного мира. Поэтому защита прав интеллектуальной собственности является одной из важнейших задач государства и общества, которое стремится занять достойное место в мировом сообществе.

Целью статьи является изучение проблемных вопросов назначения судебных экспертиз в области интеллектуальной собственности и анализ путей их решения.

Актуальность исследования обусловлена стремительным ростом числа противоправных действий в сфере интеллектуальной собственности.

Исследование проводилось на основе методики системного анализа и обобщения информации, полученной в ходе проведенного опроса категории следователей, осуществляющих досудебное расследование противоправных действий в отношении объектов интеллектуальной собственности, а также отчетов МВД Украины и Национальной полиции Украины за 2012, 2016-2018 года.

Проанализированы изменения в законодательстве, регулирующем правоотношения в сфере интеллектуальной собственности, а также взаимосвязь государственных и негосударственных специальных экспертных учреждений, осуществляющих экспертные исследования объектов интеллектуальной собственности. Определены ключевые вопросы, которые будут способствовать повышению качества как самого исследования, так и всего процесса исследования в целом.

Ключевые слова: интеллектуальная собственность, судебная экспертиза, эксперт, нарушение, средства правовой защиты