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Anargul1982@mail.ru**ESSENCE, MODERN DEFINITION OF INTELLECTUAL PROPERTY
AND THE PROCESSES OF ITS COMMERCIALIZATION**

Abstract. This article discusses the classification of intellectual property institutions, and presents a range of intellectual property objects. The article presents also the nature of their use, analyzes the domestic and foreign researchers' scientific approaches to the problems of classifying intellectual property objects that we study. This article studies the domestic and foreign legislative framework of the definition we are studying to determine objects for commercialization.

Keywords: intellectual property, types of intellectual property, commercialization, objects of commercialization.

Currently the question of intellectual property in Kazakhstan is boiling down to the following: will Kazakhstan exist as a country with its own full-fledged intangible assets of intellectual property that create high value added and share in the national gross domestic product, as China and India successfully do, greatly increasing its capitalization, or its individual pieces will be subject to external control by the states where the market economy has already taken place (as is done in the most economical backward countries of Africa and Latin America).

In order to avoid the last option, it is not just necessary to create a completely new non-material economy from scratch "... first of all, it is necessary to ensure the development of such areas of the "economy of the future" as alternative energy, new materials, biomedicine, big data, Internet of things, artificial intelligence, blockchain and others. The place and role of the country in the global world will depend on them in the future"[1], where the right and intellectual property associated with the production of scientific and technological progress products will actively promote their commercialization.

Thus, successful results in the field of technology transfer (industrial property) can be achieved with the availability of appropriate resources, proper organization and the optimal combination of efforts to protect intellectual property rights in various sectors that promote the promotion and commercialization of intellectual property [2]. It is the country's intellectual potential that is the driving factor for the development of the economy [3].

In this article we will reveal the economic essence of the commercialization of intellectual property, and not a complete list of problems hindering the effectiveness of this process.

A definite opinion on the types and objects of intellectual property can be made by considering the Civil Code of the Republic of Kazakhstan (CCRK), intellectual property laws, as well as confidentiality agreements (agreements) or transfer of know-how rights, licensing agreements, etc. The fundamental law for all legal policy and development of the main parts of the legal system is the Constitution of the Republic of Kazakhstan. Article 20 of the Constitution of the Republic of Kazakhstan guarantees freedom of creativity. This laconic phrase creates a legal basis for the development of a large block of complex regulatory acts - legislation on intellectual property [4].

Unfortunately, the Constitution of the Republic of Kazakhstan dated August 30, 1995 does not contain the very concepts of "intellectual property", "intellectual property objects", since in the legal aspect it allows to expand the conceptual apparatus with respect to intellectual property objects, in the case of legal registration of other objects in the category being studied, previously not identified as the object under study.

For comparison - Article 44 in the Constitution of the Russian Federation, December 12, 1993, devoted to the freedom of literary, artistic, scientific, technical and other types of creativity, contains the provision that “intellectual property is protected by law [5].

Despite the rapid development of legislation in the field of intellectual activity, it should be noted that Kazakhstani legislation currently lacks a clear definition of the concept of “intellectual property”, while such a term (as well as terms equated to it, denoting the same set of rights, for example, the term “exclusive right”) is used in the Constitution of the Republic of Kazakhstan, in the Civil Code of the Republic of Kazakhstan, and in a number of republican laws.

In international and domestic regulatory and legal acts of the Republic of Kazakhstan there are similar interpretations of this term, differing primarily in the scope of the rights covered.

In accordance with paragraph 8 of the Article 2 of the above World Intellectual Property Organization (WIPO) Convention “intellectual property” includes rights relating to: literary, artistic and scientific works; performing activity of artists, sound recordings, radio and television programs; inventions in all areas of human activity; scientific discoveries; industrial designs; trademarks, service marks, brand names and commercial designations; protection against unfair competition, as well as all other rights relating to intellectual activity in the industrial, scientific, literary, artistic fields [6].

Kazakhstan’s national legislation also contains norms from which the concept of the objects in question can be understood. First of all, this is the Civil Code of the Republic of Kazakhstan (CC RK), the Law “On Copyright and Related Rights, June 10, 1996. To some extent, the articles 961 - 970 of the Special Part of the Civil Code of the Republic of Kazakhstan are devoted to defining the essence of the concept of intellectual property.

Article 961 of the Special Part in the Civil Code of the Republic of Kazakhstan established that the objects of intellectual property rights include: results of intellectual creative activity; civil turnover participants’ means of individualization, goods, works and service.

In turn, the results of intellectual creative activity include: works of science, literature and art; performance, soundtracks and broadcasts; broadcast organization; inventions, utility models, industrial designs; selection achievements; integrated circuit topologies; undisclosed information, including trade secrets (“know – how”); other results of intellectual creative activity in cases stipulated by the Civil Code of the Republic of Kazakhstan or other legislative acts [7].

The means of individualization of participants in civilian circulation, goods, works, or services include: brand names; trademarks (service marks); appellations of goods origin (indication of origin); other means of participants’ individualization in civil turnover, goods and services in cases provided for by the Code and legislative acts.

As can be seen from the comparison of the text of Article 961 in the Civil Code of the Republic of Kazakhstan and the WIPO Convention, the absolute majority of the objects listed in its text, coincide with those stated in the mentioned Convention, with the exception of the protection of unfair competition [8].

The analyzed article is very important for a correct understanding of what is the object of intellectual property, although it does not contain a specific definition of such an object in its text. The study of the essence of intellectual property implies its objective characteristic. Theoretically, this problem is not sufficiently developed, as evidenced by the abundance of points of view on the classification of intellectual property objects that do not provide an unambiguous understanding of the objects under study, demonstrating a large range of characteristics from various sides.

The text of the Article 961 in the Civil Code of the Republic of Kazakhstan develops the position of WIPO. Not just a list of objects is given, but their system and classification is given. As can be seen from the review of the article, there are two groups of intellectual property objects determined by their composition: the results of intellectual creative activity and the means of participants’ individualization in civilian circulation, goods, works and services.

A further review of the composition of the two selected groups shows that the list of objects for each of these groups is not complete. This allows us to take into account the prospects of scientific and technological development and to cover with legal regulation a new, previously unknown achievement of science, technology, but after the adoption of it the norms in the Civil Code of the Republic of Kazakhstan or other legislative act. That is why Internet domains that are quite common today, pictograms (schematic images containing reference information), innovation proposals, discoveries, etc., are not protected by the

legislation of the Republic of Kazakhstan, since they are not mentioned as objects of intellectual property in them.

A review of two groups of intellectual property rights shows again how diverse objects are included in this broad concept.

All objects listed in this article can be divided into independent institutions - copyright and neighboring law; industrial property law (patent law); the right to means of individualization (the right to a trademark); the right to breeding achievements; the right to topology of integrated circuits [9].

Objects of copyright, according to the Article 7 of the Law of the Republic of Kazakhstan “On Copyright and Related Rights” are: literary works (literary - artistic, scientific, educational, journalistic, etc.); dramatic and musical dramatic works; screenplays; works of choreography and pantomime; musical works with and without text; other works.

According to Art. 985 of the Civil Code of the Republic of Kazakhstan, related rights apply to productions, performances, phonograms, programs of organizations, broadcasting and cable broadcasting.

The main special law regulating this statement is the Law of the Republic of Kazakhstan No. 6-1 “On Copyright and Related Rights” dated June 10, 1996.

Inventions, utility models, industrial designs; selection achievements; integrated circuit topologies; service marks and appellations of origin; undisclosed information refers to the Institute of Industrial Property Law.

The term “object of industrial property” is not used in the Civil Code of the Republic of Kazakhstan, but it is used, in particular, in the text of the Patent Law of the Republic of Kazakhstan. He came to the Civil Law of the Republic of Kazakhstan from international legal relations regarding intellectual property, where he is actively used in connection with the participation of almost all countries of the world, including Kazakhstan, in the Paris Convention for the Protection of Industrial Property of March 20, 1883.

In turn, industrial property rights distinguish independent institutions: the institute of patent law, which includes issues of legal regulation of inventions, utility models; industrial designs; the institute for means of participants’ individualization in civil turnover, goods and services, covering the legal regulation of company names, trademarks, service marks and appellations of goods origin.

The main special laws regulating the issues of emergence, use and protection of rights to specified objects are the Patent Law of the Republic of Kazakhstan dated July 16, 1999, the Law on Trademarks, Service Marks and Appellations of Goods Origin of July 26, 1999.

They stand apart, forming a separate group of so-called “atypical objects of intellectual property” in the literature, Breeding achievements; integrated circuit topologies; undisclosed information, including production secrets (know-how). Special laws that develop the norms in the Civil Code of Kazakhstan on these objects are the Law on Protection of Breeding Achievements of July 13, 1999, the Law on Protection of Topologies of Integrated Circuits of June 29, 2001. Repeated attempts to adopt a law on trade secrets or the main issues of the legal regime of undisclosed information, including secrets of production, know-how, etc., were not crowned with success.

Definitions that reveal the essence of the intellectual property items listed in this article are contained in other articles of the Civil Code of the Republic of Kazakhstan, as well as in special laws on certain types of intellectual property items. So, Art. 2 in the Law on Copyright discloses the concept of objects of copyright and related rights - works, performances, phonograms, transmissions of the organization of air and cable broadcasting. Article 991 in the Civil Code of the Republic of Kazakhstan and Articles 7,8 in the Patent Law defines the invention, utility model and industrial design. In Art. 1006 in the Civil Code and Art. 2 in the Law on Breeding Achievements the concept of breeding achievements is given. Section 1 of the Topology Act defines the topology of an integrated circuit. In the Art. 38 in the Civil Code the concept of brand name is disclosed, and in the Art. 1024 of the Civil Code and in the Art. 1 of the Law on Trademarks is the definitions of a trademark, service mark and appellation of goods origin disclosed.

There is no definitions of undisclosed information in the legislation. The idea of it can be obtained from the interpretation of Articles 126, 1017 - 1019 in the Civil Code of the Republic of Kazakhstan.

As can be seen from the text analysis the Art. 961 in the Civil Code of the Republic of Kazakhstan belongs to the category of the most important “system-determining” articles of the entire sub-institute of civil law called “intellectual property law”, as it contains a classification of all objects of intellectual property protected by law.

Thus, as follows from our previous review, a sufficiently developed legal framework for the regulation of intellectual property as a whole and its individual types exists in the republic. In addition, we note that it was the international agreements and acts mentioned in Appendix 1 that had a significant impact on the formation of domestic legislation on intellectual property.

Although our study revealed that there is no specific definition of intellectual property in the extensive list of official regulatory and legislative documents related to intellectual property. As already revealed, one way or another, they are defined through the category of rights.

In the above classification of intellectual property institutions, attention is paid primarily to institutional and legal aspects. The legal criterion for the classification of intellectual property narrows their range, removes many of the results of intellectual activity from the list [10]. For the purposes of modern economic analysis, in addition to the legal regime, it is necessary to take into account other characteristic features of intellectual property objects and institutions.

The spectrum of intellectual property object (IPO), as well as the nature of their creation and use is very diverse. Differing from each other, IOPs at the same time have a number of common features that allow grouping them according to one or another criteria. The identification of such criteria and the classification of the relations of intellectual property in accordance with them makes it possible to further clearly define the concept of intellectual property.

Considering all existing approaches in full does not seem appropriate for us. Based on the topic, the research will consider those scientific approaches that may be of practical importance for understanding the features of commercialization, that is, the involvement of intellectual property in economic circulation within the industrial-innovative sphere.

Among the domestic researchers who study the classification of intellectual property objects, the approach of Kenzheguzin M.B., Dnishev F.M., Alzhanova F.G. is interesting. In their monographs these researchers justify the need to introduce the status of state intellectual property in relation to objects created on the basis of funding from state budget funds.

We consider it expedient to introduce such a status of intellectual property. The rationale for this may be the relationship of the category of “intellectual property” with the category of “property” defined in the first section. Based on this, we propose to consider the form of ownership in the Republic of Kazakhstan.

The Civil Code of the Republic of Kazakhstan defines the legal space for private, state and mixed forms of ownership.

In paragraph 1 of the Art. 6 of the Constitution of the Republic of Kazakhstan state and private property are separately distinguished: “In the Republic of Kazakhstan, state and private property are recognized and equally protected” [11]. We also noted about the relationship of “property” as a generic category and “intellectual property”, as its species, which preserves the basic properties of the first (generic), therefore, intellectual property can act in the form of private, public property. According to Nigmatullina L.G. within intellectual private property, one can distinguish intellectual individual-private property (of one author) and intellectual collective property — private property (groups of authors) [12].

Some authors believe that intellectual property can be distinguished depending on the nature of cognitive, creative activity. Objects of industrial property are mainly the results of scientific and technical creativity, objects of copyright results of literary - artistic and scientific creativity, objects of related rights - the results of performing activities, production secrets relate to any type of activity. This classification indicates that the author actually proceeds from the principles of legal protection.

In the dissertation of Tatieva M.M., who relied on scientific research of Khan V. A., it was proposed to allocate only those types of intellectual property that are directly involved in the production process and call them scientific intellectual property. It gives a definition: “... scientific intellectual property - ownership of the results of scientific research, experimental design and experimental technological works” [13]. Other types of intellectual property are related to the regulation of social legislation. In his research Tatieva M.M. proposed a systematic structure of intellectual property. In accordance with its classification, intellectual property consists of industrial property, copyright, know - how (secrets) and scientific discoveries.

A similar classification can be determined by reviewing the scientific works of G. Barysheva. In her opinion, it seems promising to consider three types of property from the point of view of the analysis of intellectual property: intellectual property, scientific intellectual property, industrial property [14].

Advantages of classifications of Tatieva M.M. and Barysheva G.A. is the expansion of the range of intellectual property, the inclusion of scientific discoveries and other theoretical knowledge.

However, it is necessary to take into account that, according to Bromberg G.V. among the objects of intellectual property, scientific discoveries should not appear, since the cognitive results, like any analytical knowledge, being an intellectual product, are not intellectual goods and do not give any monopoly rights. However, this category among the objects of intellectual property is mentioned. Apparently, this is indicated by the recognition of the significance of large-scale scientific results on which the inventions are based. On the other hand, the example of the USSR could have an effect here, where discoveries were registered by the patent office (Committee for Inventions and Discoveries) and given diplomas, which, however, were only a moral incentive and a form of recognition of a scientist from the society [15].

Considering further the topic of our research, let us turn to the definition of intellectual property based on the importance of commercialization of intellectual property in the innovation process. Due to the fact that the commercialization of intellectual property is part of the innovation process, we considered the classification of intellectual property proposed by N. Urazbayeva. In accordance with the degree of implementation of the innovation function of intellectual property objects in his monograph N. Urazbayeva. highlights: objects of intellectual property directly used as innovations, objects of intellectual property indirectly used as innovations, objects of intellectual property not used as innovations.

“Intellectual property objects used as innovations (mainly industrial property objects embodied in a specific material shell, which are used in their owner’s own production; partly copyright and related rights objects (music, art and other works that are used, for example in their own entertainment industry owners).

Objects of intellectual property indirectly used as innovations (mainly industrial property objects that are used as innovations after the legal procedure for transferring rights to use them to other business entities; partly objects of copyright and related rights that are used after the rights to use them are exercised other objects (for example, music screensavers for computers, etc.) ”[16].

Nigmatullina L.G. suggests “classifying intellectual property according to the specifics of acquiring a tangible form of expressing new knowledge into: spiritual (literary and artistic activity results); scientific (the results of fundamental scientific creativity); industrial (results of applied scientific and technical creativity); commercial (the results of intellectual activity that promote the promotion of the product to the consumer, for example, means of individualization). The proposed classification allows to determine the degree of susceptibility of intellectual property to commercialization. Thus, the spiritual and scientific results of intellectual activity, being in the public domain, are the least of all, and industrial and commercial are more susceptible to commercialization ”[17].

Based on scientific approaches of Urazbayeva N.A., Tatieva M.M., Barysheva G.A. and Nigmatullina GB, we will try to further develop the classification of intellectual property based on the dissemination of the results of innovative entrepreneurship. We propose to classify intellectual property by the degree of commercialization of:

- objects of intellectual property subject to commercialization (patents for inventions, certificates for industrial designs and utility models; means of individualization);

- objects of intellectual property indirectly subject to commercialization (trademarks, service marks and commercial names, if they are not part of technology transfer transactions; results of applied scientific and technical creativity).

The above classifications determine the susceptibility of intellectual property to commercialization in the framework of the innovative development of Kazakhstan. For our study, the proposed classification criteria help reveal the essence of the commercialization of intellectual property.

Summarizing the definitions of intellectual property that exist in the economic literature, we propose the following interpretation. Intellectual property is a system of attribution relations that develop between economic agents in the process of distribution, exchange and consumption of specific products of intellectual labor as objects of the innovation sphere.

As part of our study, it should also be noted that not all the results of intellectual labor are institutionally (subjectively) recognized as objects of intellectual property. Many of them, due to the fact that they do not correspond to the title of intellectual property, are used in the regime of general accessibility, that is, all economic subjects are endowed with equal opportunities and rights in relation not

only to ownership, but also to use these intellectual property results. Unlimited resource denies the possibility of extracting additional (compared to competitors) benefits from its use, and the absence of some signs, for example, rarity, does not allow this kind of intellectual activity to act as a commodity, that is, be subject to commercialization. These include the results of fundamental scientific research, which are represented by various types of scientific products: reports, articles, monographs, research reports, etc., where ideas, hypotheses, scientific propositions, discoveries, etc. take on material form.

The influence of criteria restricting a legal monopoly (in the form of a patent or other protection document) established by law is so significant that, according to some experts, no more than 10% of scientific developments can be commercialized, and the rest is scientific knowledge of the outside world, understanding of problems person and society, etc.

However, in our opinion, the unprotected results of intellectual activity that are objectively the intellectual property of the authors-creators (or other owners) of an intellectual product, under certain conditions, do not lose their product properties and, accordingly, can also be involved in the market turnover. In addition, the results of intellectual activity are not immediately institutionalized, that is, subjectively, recognized as objects of intellectual property. They pass a long way of patent examination (lasting two years or more), which is not always and not for all the results of intellectual activity ends with the issuance of a corresponding protection document confirming the title of ownership. In this period, in our opinion, it is also possible to use economic results of intellectual activity, for example, in the mode of know-how.

It should be borne in mind that in practice often not all intellectual products that meet the eligibility criteria are patented in order to preserve for a time an absolute monopoly in this field of activity.

So, without exception, the results of intellectual activity, regardless of their institutional (subjective) recognition as objects of intellectual property, under market conditions can become objects of commercialization, which is reflected in Figure 1. This structure represents an attempt to combine economic and legal aspects of the intellectual property classification.

Real property right continues to be ensured not by its formal consolidation, but by the relations that develop between the actors of economic life [18].

Thus, relying on the research of the intellectual property objects nature existing in economics [19], it can be argued that intellectual property objects are the results of the social subjects interrelation entering into certain economic relations. The sphere of creation and use of intellectual products can be characterized by a plurality of subjects, which determines their various interrelations.

Our proposed classification of intellectual property does not exhaust the whole diversity of intellectual property, in our opinion, it contains the criteria that further contribute to the disclosure of the essence of the commercialization of intellectual property.

Scientific works of Kenzheguzin, M.B., Dnisheva, F.M., Alzhanova, F.G., Bromberg, G.V., Urazbayeva, N.A., Tatieva, M.M., Barysheva, G.A., Nigmatullina, G.B., Sharanova N.A., the current regulatory and legal framework of the Republic of Kazakhstan in relation to intellectual property objects shows that there are significant differences in the composition and characteristics of intellectual property objects.

Intellectual property is a system of attribution relations that develop between economic agents in the process of distribution, exchange and consumption of specific products of intellectual labor as objects of the innovation sphere.

The objects of intellectual property in the Republic of Kazakhstan can be divided into independent institutions - copyright and related law; industrial property law (patent law); the right to means of individualization (the right to a trademark); the right to breeding achievements; right to topology of integrated circuits.

The spectrum of intellectual property objects (IPO), as well as the nature of their creation and use is very diverse. Differing from each other, IPOs at the same time have a number of common features that allow grouping them according to one or another criteria. The identification of such criteria and the classification of the relations of intellectual property in accordance with them makes it possible to further clearly define the concept of intellectual property.

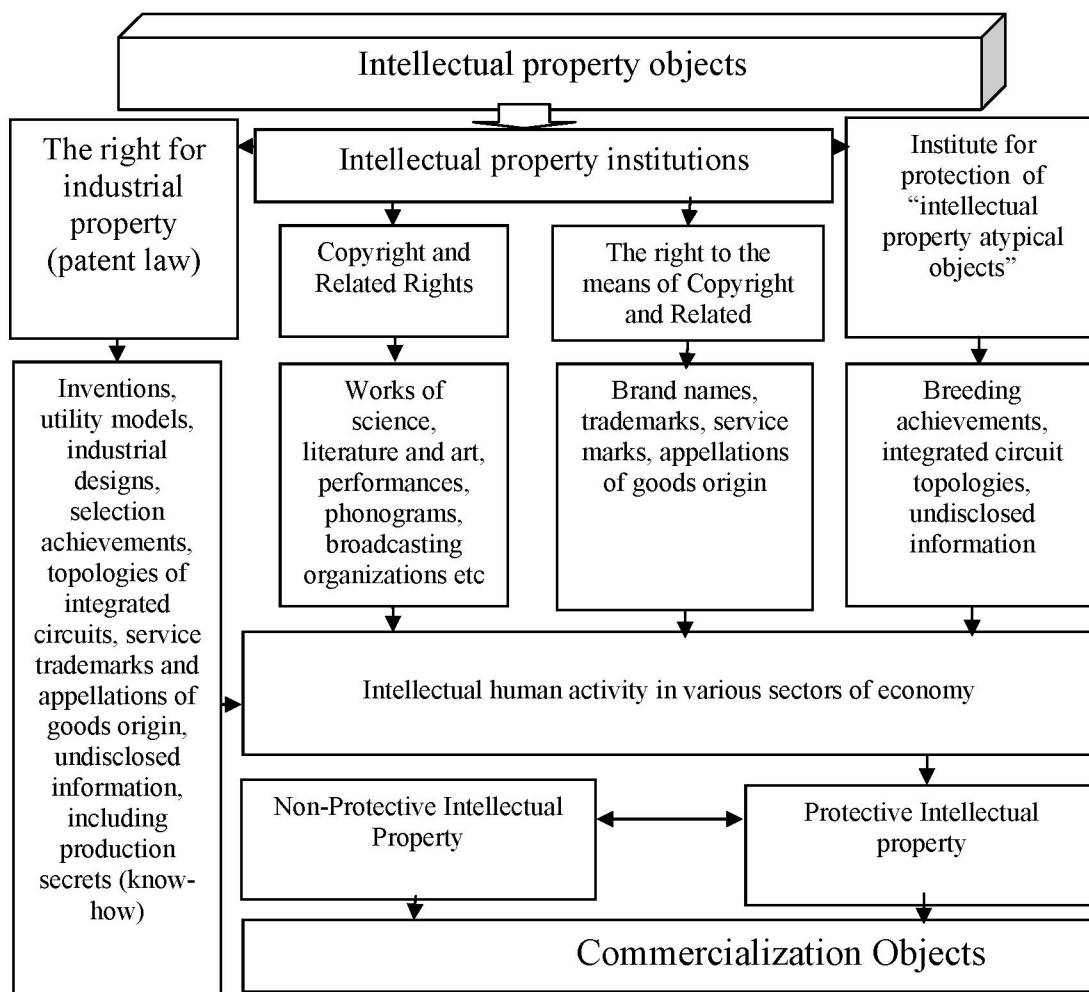


Figure 1 - Intellectual Property Structure

The system in the formation of intellectual property objects is absent, which negatively affects not only the practice of their use in the activities of individuals and legal entities, including in business valuation, but also in understanding possible protection. In this regard, we have proposed an integrated list of intellectual property that can be focused on high-tech markets and is subject to commercialization.

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ЗИЯТКЕРЛІК МЕНШІКТІҢ МӘНІ, ҚАЗІРГІ АНЫҚТАМАСЫ ЖӘНЕ ОНЫ КОММЕРЦИЯЛАНДЫРУ ПРОЦЕСТЕРІ

Аннотация. Мақалада зияткерлік меншік институттарының жіктелуі қарастырылады, зияткерлік меншік объектілерінің спектрі келтірілген, оларды пайдалану сипаты берілген, зияткерлік меншік объектілерін жіктеу мәселелерінің отандық және шетелдік зерттеушілердің ғылыми тәсілдері талданды, коммерцияландыру объектілерін анықтау мақсатында біз зерттеген дефиницияның отандық және шетелдік заңнамалық базасы зерттелді.

Түйін сөздер: зияткерлік меншік, зияткерлік меншік объектілерінің түрлері, коммерцияландыру, коммерцияландыру объектілері

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СУЩНОСТЬ, СОВРЕМЕННОЕ ОПРЕДЕЛЕНИЕ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ И ПРОЦЕССЫ ЕЕ КОММЕРЦИАЛИЗАЦИИ

Аннотация. В статье рассматриваются классификация институтов интеллектуальной собственности, приведен спектр объектов интеллектуальной собственности, представлен характер их использования, проанализированы научные подходы отечественных и зарубежных исследователей изучаемой нами проблематики классификации объектов интеллектуальной собственности, изучена отечественная и зарубежная законодательная база исследуемой нами дефиниции в целях определения объектов коммерциализации.

Ключевые слова: интеллектуальная собственность, виды объектов интеллектуальной собственности, коммерциализация, объекты коммерциализации.

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