Belarusian National Technical University

Faculty «International institute of distance education»

Department «Information technology in management»

AGREED
Head of Department
_____ E.S.Lisitsa
26.12.2022

AGREED
Director of IIDE
_____ M.A.Sednina
26.12.2022

ELECTRONIC EDUCATIONAL-METHODICAL COMPLEX ON ACADEMIC DISCIPLINE

FUNDAMENTALS OF INTELLECTUAL PROPERTY MANAGEMENT

for specialty: 1-26 02 02 «Management (according to directions)»

Compiler:
Glavnitskaya I.N., senior lecturer

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List of materials

Texts of lectures, seminar lesson plan, knowledge control materials, learning resources.

Explanatory note

Electronic educational-methodical complex (EEMC) on academic discipline «Fundamentals of intellectual property management» is prepared on the basis of educational program of specialty 1-26 02 02 «Management (according to directions)». The objective of the discipline is to form students' knowledge and skills in the field of intellectual property management.

The purpose of EEMC

The purpose of EEMC is to provide educational framework and general training materials, which help to learn registration and implementation of rights to objects of intellectual property, as well as the skills in conducting patent information search.

Features of structuring and presenting educational material

EEMC includes the following sections: theoretical, practical, knowledge control, auxiliary.

The theoretical section presents lecture material in accordance with the main sections and topics of the syllabus.

The practical section includes seminar lesson plan and describes the questions and problems that should be solved at seminar classes and during the independent work.

The knowledge control section contains tests, lists of essay topics and credit questions.

The auxiliary section includes a list of legislation, basic and additional literature, internet sources.

EEMC provides navigation through sections and active links to quickly find the necessary material.

Recommendations for organizing work with EEMC

When working with the EEMC, it is recommended to actively use the specified legal framework (national laws, international conventions), as well as hyperlinks that allow you to quickly switch to the current legislation in the field of intellectual property management.

CONTENTS

SECTION 1. LECTURES

UNIT 1. THE CONCEPT OF INTELLECTUAL PROPERTY

1.1. The concept and role of intellectual property in the socio-economic development of society

The Republic of Belarus actively participates in international cooperation and, within the framework of fulfilling its obligations arising from the relevant international agreements, ensures the implementation of international standards in the field of intellectual property.

At the present stage, the national system of intellectual property is an effective mechanism for the socio-economic development of the state. It includes developed legislation and infrastructure that ensures the implementation of state and sectoral policies in the field of intellectual property, solving a wide range of tasks in the field of protection, management and protection of intellectual property.

The main goals of state policy in the field of intellectual property are:

completion of the formation of the institutional foundations for the functioning of the national intellectual property system that meets the current and future needs of the economy and society;

comprehensive integration of the national intellectual property system into the social and economic policy of the state and on this basis increasing the competitiveness of the economy of the Republic of Belarus.

The implementation of state policy in the field of intellectual property is carried out in the following main areas:

development of legislation in the field of intellectual property;

infrastructure development in the field of intellectual property;

development of functional areas in the field of intellectual property (protection, assessment, etc.);

improvement of work in the field of intellectual property management at the departmental (sectoral) level, in scientific and educational institutions, organizations of the creative and commercial and industrial spheres;

development of national branding based on competitive sectors of the economy (areas of economic activity) and the use of mechanisms for managing intellectual property;

development of a complex of financial, moral and other incentive tools aimed at expanding the practice of creating and using objects of intellectual property.

The concept of «intellectual property» is defined in the *Convention Establishing the World Intellectual Property Organization* (Stockholm, July 14, 1967). According to the provisions of this Convention, *«intellectual property» includes rights related to*:

- inventions in all areas of human activity
- literary, artistic and scientific works
- rights related to intellectual activity in industrial, scientific, literary and artistic fields
- trademarks, service marks, trade names and commercial designations
- industrial designs
- scientific discoveries
- performing activities of artists, sound recording, radio and television broadcasts
- protection against unfair competition

1.2. Intellectual property objects

According to Section V of the Civil Code of the Republic of Belarus (Civil Code), *intellectual property objects include 2 main sections*:

- copyright objects and related rights objects:
- industrial property objects

Intellectual property objects are presented in Table 1 bellow.

Table 1. Intellectual property objects

intellectual property objects		
copyright objects	**related rights objects**	**industrial property objects**
literary, artistic and scientific works	performing activities of artists	inventions
	sound recording	utility models
	radio and television broadcasts	industrial designs
		selection achievements
		topology of integrated circuits
		trademarks
		geographical indications
		production secrets (know-how)

Legal protection of intellectual property objects arises by virtue of the fact of their creation or as a result of the provision of legal protection by an authorized state body in the cases and in the manner provided for by legislative acts.

According to Art. 983 of the Civil Code, the owner of property rights to the result of intellectual activity (with the exception of production secrets (know-how)) or a means of individualization has the exclusive right to lawfully use this intellectual property object at his own discretion in any form and in any way. The use by other persons of intellectual property objects in respect of which their rightholder possesses an exclusive right is allowed only with the consent of the rightholder.

The owner of the exclusive right to an intellectual property object has the right to transfer this right to another person in whole or in part, to allow another person to use the intellectual property object and has the right to dispose of it in a different way, if this does not contradict the legislation.

Restrictions on exclusive rights, including by providing the possibility of using the object of intellectual property to others, the recognition of these rights as invalid and their termination (cancellation) are allowed in the cases, within the limits and in

the manner established by law. Restrictions on exclusive rights are allowed provided that such restrictions do not prejudice the normal use of the intellectual property object and do not unreasonably prejudice the legitimate interests of rightholders.

1.3. Intellectual property legislation

Legislation in the field of intellectual property is a multi-level system that meets modern international standards and regulates relations in the field of protection and use of trademarks, inventions, industrial designs, varieties of plants, computer programs, works of science, literature and art and other objects of intellectual property.

The legislative base of this system is formed by the norms of the Civil Code of the Republic of Belarus and laws on the legal protection of intellectual property objects.

Issues of responsibility for violations of intellectual property rights, valuation of intellectual property, implementation of administrative procedures related to the protection of intellectual property, stimulation of the creation and use of intellectual property, as well as financial and economic aspects of intellectual property management are regulated by regulatory legal acts of related branches of legislation.

The Republic of Belarus is a party to international treaties functioning under the auspices of the World Intellectual Property Organization (hereinafter - WIPO), as well as a member of the Eurasian Patent Organization (EAPO). As practice shows, in accordance with modern international standards, the legislation of the Republic of Belarus allows domestic and foreign entities to ensure reliable protection and effective use of the results of intellectual activity, to receive additional profit, competitive advantages and guarantees stable and secure presence of goods (services) in the domestic and foreign markets.

The sources of legal regulation of intellectual property include:

- international acts
- acts of the national legislation.

Basic international acts in the field of intellectual property:

- Paris Convention for the Protection of Industrial Property (1883)
- Madrid Agreement Concerning the International Registration of Marks (1891)
- Patent Cooperation Treaty («PCT») (1970)
- Berne Convention for the Protection of Literary and Artistic Works (1886)
- WIPO Copyright Treaty (1996)
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)

Basic national acts of the Republic of Belarus in the field of intellectual property:

- Constitution of the Republic of Belarus (1994)
- acts of the President of the Republic of Belarus
- Civil Code of the Republic of Belarus (1998)
- intellectual property laws and acts

UNIT 2. COPYRIGHT AND RELATED RIGHTS

2.1. Copyright

2.1.1 Copyright legislation

The legislation on copyright regulates relations arising in connection with the creation and use of *works of science, literature, art (copyright).*

The main international acts in the field of copyright:

- Berne Convention for the Protection of Literary and Artistic Works (1886)
- Universal Copyright Convention (1952)

National regulations in the field of copyright:

- Constitution of the Republic of Belarus (1994)
- acts of the President of the Republic of Belarus
- Civil Code of the Republic of Belarus (1998)
- Law of the Republic of Belarus «On Copyright and Related Rights» (2011)

2.1.2. Copyright objects

Copyright applies to works of science, literature and art that are the result of creative activity, regardless of the purpose and dignity of the works, as well as the way they are expressed.

Copyright extends to both published and unpublished works that exist in any objective form:

- written (manuscript, typescript, musical notation, etc.);
- oral (public speaking, public performance, etc.);
- sound or video recording (mechanical, magnetic, digital, optical, etc.);
- images (drawing, sketch, painting, map, plan, drawing, film, television, video, photo frame, etc.);
- volumetric-spatial (sculpture, model, model, structure, etc.);
- electronic, including digital;
- other form.

Copyright objects are:

- literary works (books, brochures, articles, etc.)
- dramatic and musical-dramatic works, works of choreography and pantomime and other script works
- musical works with and without text
- audiovisual works
- works of fine art (sculpture, painting, graphics, lithography, etc.)
- works of applied art and design
- works of architecture, urban planning and gardening art
- photographic works, including works obtained by methods similar to photography
- maps, plans, sketches, illustrations and plastic works related to geography, cartography and other sciences
- computer programs
- works of science (monographs, articles, reports, scientific lectures and reports, dissertations, design documentation, etc.) and other works.

Objects of copyright also include:

- derivative works
- compound works.

2.1.3. Works that are not objects of copyright

Are not subject to copyright:

- *official documents* (legal acts, court orders, other documents of an administrative and judicial nature, constituent documents of organizations), as well as their official translations
- *state symbols of the Republic of Belarus* (State Flag of the Republic of Belarus, State Emblem of the Republic of Belarus, State Anthem of the Republic of Belarus), symbols of state awards of the Republic of Belarus (orders and medals), state signs (banknotes of the Republic of Belarus, postage stamps and other signs), official heraldic symbols (flags, coats of arms of administrative-territorial units of the Republic of Belarus, heraldic signs, banners, badges, emblems of state bodies, etc.)
- *works of folk art, the authors of which are unknown.*

Copyright does not apply to the actual *ideas, methods, processes, systems, methods, concepts, principles, discoveries, facts,* even if they are expressed, displayed, explained or embodied in a work.

2.1.4. Origin of copyright

Copyright in a work arises by virtue of the fact of its creation. For the emergence and exercise of copyright does not require compliance with any formalities.

In the absence of evidence to the contrary, the author of the work shall be deemed to be the person indicated as the author on the copy of the work (presumption of authorship).

When publishing a work without designating a name (anonymously) or under a fictitious name (pseudonym), unless the author's pseudonym leaves no doubt about his identity, the publisher, whose name or title is indicated on this work, in the absence of evidence to the contrary, is considered a representative of the author in accordance with this Law and in this capacity has the right to protect the rights of the author and ensure their implementation.

The provisions of the first part of this clause are valid until the author of such a work discloses his true name and does not declare his authorship to the work.

2.1.5. Co-authorship

Copyright to a work created by the joint creative work of two or more persons (co-authorship) belongs to the co-authors jointly, regardless of whether such a work forms an inseparable whole or consists of parts, each of which has an independent meaning.

A part of a work is recognized as having an independent meaning if it can be used independently of other parts of this work.

The right to use the work as a whole belongs to the co-authors jointly, unless otherwise provided by the agreement between them.

Each of the co-authors has the right to use the part of the work created by him, which has an independent meaning, at his own discretion, unless otherwise provided by the agreement between them.

Income from the joint use of a work shall be distributed equally among all co-authors, unless otherwise provided by an agreement between them.

If the work of co-authors forms an inseparable whole, then none of the co-authors has the right to prohibit other co-authors from using the work without sufficient grounds.

Persons who contributed to the creation of the work by providing technical, administrative or financial assistance are not recognized as co-authors.

Each of the co-authors has the right to independently take measures to protect their rights, including in the case when the work created by the co-authors forms an inseparable whole.

2.1.6. Copyright in Derivative Works

The authors of derivative works shall have the copyright for the translation or other processing of the work carried out by them, subject to the rights of the author of the processed work.

The copyright of the authors of derivative works does not prevent other persons from making their own translations or other transformations of the same work, provided that the rights of the author of the work being processed are respected.

2.1.7. Copyright in a Composite Work

The author of the collection and other composite works (compiler) owns the copyright for the selection or arrangement of materials carried out by him, which is the result of creative work (compilation).

The compiler enjoys copyright provided that the rights of the authors of each of the works included in the composite work are respected.

Authors of works included in a composite work have the right to use their works independently of the composite work, unless otherwise provided by an agreement with the compiler.

The copyright of the compiler does not prevent others from independently selecting or disposing of the same materials to create their composite works.

The publisher of encyclopedias, encyclopedic dictionaries, periodicals and ongoing collections of scientific works, as well as the legal entity entrusted with the functions of the editorial office of the mass media (newspaper, magazine or other print media), has the exclusive right to use such publications as a whole. The publisher, as well as the legal entity entrusted with the functions of the editorial office of the mass media, has the right, in any use of such publications, to indicate its name or name or to demand their indication.

Authors or other holders of exclusive rights to works included in such publications retain exclusive rights to their works, regardless of the ownership of the exclusive rights to such publications as a whole, unless the exclusive rights to works have been transferred to the publisher or a legal entity entrusted with the functions the editorial offices of the mass media, under an agreement, or transferred to them in accordance with paragraphs 2 and 3 of Article 17 of this Law.

2.1.8. Copyright in an audiovisual work

The authors of an audiovisual work are a stage director, script writer, author of a musical work specially created for an audiovisual work with or without text, director of photography, production designer.

The conclusion of a contract with the author of an audiovisual work for the creation of this work shall entail the transfer to the producer of the audiovisual work of the exclusive right to the audiovisual work for the entire duration of the copyright, unless otherwise provided by the contract.

The producer of an audiovisual work shall have the right, in any use of this work, to indicate his name or title, or to demand their indication.

After the liquidation of a legal entity - the producer of an audiovisual work, as well as in the event of the death of an individual - the producer of an audiovisual work in the absence of heirs, the exclusive right to an audiovisual work automatically passes to its authors, in the event of the death of the authors - to their heirs in accordance with the procedure established by legislative acts.

The author of a musical work with or without text, including one specially created for an audiovisual work, has the right to remuneration for public performance, broadcasting or transmission by cable of an audiovisual work, including this musical work, unless otherwise provided by the contract between the author of the musical work and the producer of the audiovisual work.

The inclusion in the composition of an audiovisual work or the processing for the purpose of using pre-existing works in an audiovisual work is permitted provided that the rights of the authors of such works are respected.

Authors of pre-existing works incorporated into an audiovisual work or modified for use in an audiovisual work retain copyright in their works and may use them separately from the audiovisual work.

The author of an audiovisual work shall not have the right to hinder its promulgation by the producer of the audiovisual work, as well as to exercise his right

of recall, unless otherwise provided by an agreement between him and the producer of the audiovisual work.

2.1.9. Personal moral rights of the author

The author with respect to his work shall have *personal non-property rights:*

- *the right of authorship*, that is, the right to be recognized as the author of a work
- *the right to a name*, that is, the right to use or authorize the use of a work under the original name of the author, a fictitious name (pseudonym) or without a name (anonymously). The indication of the name of the author of a work when using a work in a radio program may be carried out in a radio program in which the work is used, or in another way, information about which should be contained in this radio program
- *the right to the inviolability of a work*, that is, the right meaning that without the consent of the author, it is not allowed to make any changes, abbreviations and additions to his work, except for the case provided for in paragraph 6 of Article 17 of this Law. The author has the right to object to any distortion of his work, as well as any other encroachment on the work that could damage the honor or dignity of the author. When using a work after the death of the author, the person who has the exclusive right to the work has the right to authorize the introduction of changes, abbreviations and additions to the work, provided that this does not distort the author's intention, does not violate the integrity of the perception of the work and this does not contradict the will of the author, definitely expressed by him in will
- *the right to promulgation*, that is, the right to promulgate or authorize the promulgation of a work in any form. A work not made public during the life of the author may be made public after his death by the heirs, if the publication does not contradict the will of the author, expressly expressed by him in the will
- *the right to revoke*, that is, the right to refuse a previously made decision to be made public. The right of withdrawal can only be exercised if the user is reimbursed for losses caused by such a decision, including lost profits. If the work has already been made public, the author is obliged to publicly notify about its withdrawal. At the same

time, he must withdraw previously made copies of the work from civil circulation at his own expense.

Personal non-property rights belong to the author regardless of his property rights and are retained by him in the event of transfer (transfer) of the exclusive right to a work to another person.

2.1.10. Property (economic) rights

The author in relation to his work or other rightholder shall have the *exclusive right to the work*, as well as other property rights in the cases provided for by this Law.

The exclusive right to a work means the right of the author or other rightholder to use the work at his own discretion in any form and in any way. In this case, the author or other copyright holder has the right to authorize or prohibit other persons to use the work.

The use of a work is recognized as:

- reproduction of a work
- distribution of copies of a work through sale or other transfer of ownership
- rental of copies of a work, with the exception of copies of a computer program, unless the computer program itself is the main rental object
- import into the territory of the state of copies of a work, including copies made with the permission of the author or other rightholder
- public display of copies of the work
- public performance of the work
- broadcasting the work
- transmission of the work by cable
- other communication of the work to the general public;
- translation of a work into another language
- processing of a work to create a derivative work
- other possible ways of using the work.

The author or other rightholder, in order to notify about the exclusive right to a work belonging to them, has the right, at his discretion, to use the *copyright protection mark*, which is placed on each copy of the work and necessarily consists of three elements:

- Latin letter «C» in a circle;
- name (title) of the copyright holder;
- the year of the first publication or other publication of the work.

2.1.11. Copyright in an employee work

The copyright for an employee work belongs to its author, taking into account the specifics.

The exclusive right to a work for a work from the moment of its creation shall pass to the employer, unless otherwise provided by the agreement between him and the author.

In the cases stipulated by the agreement between the employer and the author, if the exclusive right to a work for a work belongs to the employer, the author (heirs of the author) has the right to receive royalties for the use of this work.

If the employer, within five years from the day when, in accordance with part one of this clause, the exclusive right to an employee's work was transferred to him, does not begin to use this work or does not transfer the exclusive right to this work to another person, the exclusive right to the employee's work shall pass to the author unless otherwise provided by the contract between the employer and the author.

After the liquidation of the legal entity - the employer, as well as in the event of the death of the natural person - the employer in the absence of heirs, the exclusive right to the work of a service automatically passes to its author, in the event of the death of the author - to his heirs in accordance with the procedure established by legislative acts.

The author of a work in the service does not have the right to hinder its publication by the employer, as well as to exercise the right of revocation belonging to him.

2.1.12. The right to participate in the implementation of an architectural project

The author of an architectural project approved in accordance with the established procedure has the right to participate in the development of a construction project and in the implementation of field supervision over the construction of an object. The right to participate in the implementation of an architectural project for the construction of an object is not inherited and is not transferred under an agreement.

2.1.13. Duration of Copyright

Personal non-property rights to works of science, literature and art shall be protected *indefinitely.*

The exclusive right to a work is valid during the life of the author and *50 years after his death*, with the exception of the cases provided for in this article.

The exclusive right to an anonymous work or a work used under a pseudonym shall be valid for fifty years from the moment of the first lawful publication of such a work or fifty years from the moment of its creation, if within fifty years from the moment of its creation it has not been lawfully made public with consent the author.

When determining the period of validity of the exclusive right to an anonymous work or a work used under a pseudonym, in respect of which, within the period provided for in part one of this paragraph, the author disclosed his real name or his name has ceased to leave doubts, paragraph 2 of this article shall apply.

The exclusive right to a work created in co-authorship shall be valid during the life and fifty years after the death of the author who has outlived other co-authors.

The calculation of the time limits provided for in this article begins on January 1 of the year following the year in which the legal fact took place, which is the basis for the beginning of the course of the corresponding period.

2.1.14. Transfer of works into the public domain

The expiration of the exclusive right to a work means the transfer of this work into the public domain.

Works that have never been protected on the territory of the Republic of Belarus are also considered to have passed into the public domain.

Works that have passed into the public domain may be freely used by any natural or legal person without payment of remuneration. In this case, the right of authorship, the right to a name and the right to inviolability of the work must be respected.

2.2. Related rights

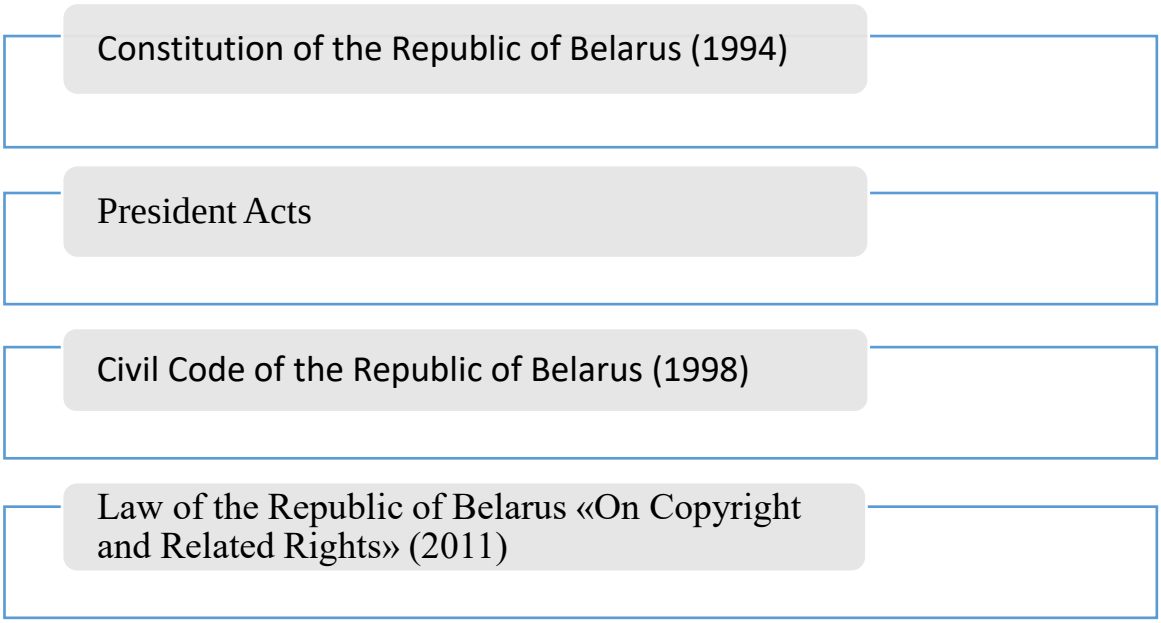
2.2.1. Related rights legislation

The legislation on related rights regulates relations arising in connection with the creation and use of performances, phonograms, broadcasts of broadcasting or cable broadcasting organizations (related rights).

- *International regulations in the field of related rights:*

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961).

- *National regulations in the field of related rights:*



2.2.2. Related rights objects

Related rights apply *to performances, phonograms, broadcasts of broadcasting or cable broadcasting organizations.*

Performances include performances by performers and conductors, productions by stage directors.

Observance of any formalities is not required for the emergence and exercise of related rights.

2.2.3. Subjects of related rights

Subjects of related rights are *performers, producers of phonograms, broadcasting or cable broadcasting organizations.*

Subjects of related rights shall exercise their rights subject to their observance of the copyright to works of science, literature and art, as well as the related rights of others to performances, phonograms, broadcasts of broadcasting or cable broadcasting organizations used in the creation of the corresponding object of related rights.

In the absence of evidence to the contrary, the performer or producer of the phonogram shall be deemed to be the person indicated as the performer or producer of the phonogram on each copy of the phonogram.

A performer and producer of a phonogram, as well as another holder of the right to a performance or a phonogram, in order to communicate their rights, have the right, at their discretion, to use the sign of protection of related rights, which is placed on each copy of a phonogram and necessarily consists of three elements:

- Latin letter «P» in a circle;
- name (title) of the copyright holder;
- year of the first publication of the phonogram.

2.2.4. Rights to performance

The performer with respect to his performance shall have personal non-property rights:

- the right of authorship in relation to a performance, that is, the right to be recognized as a performer;
- the right to a name, that is, the right to use or authorize the use of a performance under the real name of the performer, a fictitious name (pseudonym) or without a name (anonymously);
- the right to the inviolability of performance, that is, the right meaning that without the consent of the performer, it is not allowed to make any changes, abbreviations and additions to his performance, except for the cases provided for by this Law. The performer has the right to object to any distortion or other change in his performance that could damage his reputation.

Personal non-property rights belong to the performer regardless of the exclusive right to the performance and remain with him in the event of the transfer (transfer) of the exclusive right to another person.

The personal non-property rights of the performer are inalienable and non-transferable. Any agreements aimed at waiving the performer's personal non-property rights are void.

The performer or other rightholder has the exclusive right to perform.

The exclusive right to a performance means the right of the performer or other copyright holder to use the performance at his own discretion in any form and in any way. In this case, the performer or other copyright holder has the right to authorize or prohibit other persons to use the performance.

The use of performance is recognized:

- performance recording;
- playback of the recording of the performance;
- distribution of a recording of a performance through sale or other transfer of ownership. If the recording of the performance was made with the permission of the performer or copies of the recording of the performance were lawfully introduced into civil circulation in the territory of the Republic of Belarus through their sale or other transfer of ownership, then their further distribution in the territory of the Republic of Belarus is allowed without the consent of the performer or other rightholder and without paying them rewards;
- rental of the original or copies of the recording of the performance;
- public performance of the recording of the performance, as well as public performance of the production of the production director or recording thereof;
- transmission of the performance or its recording on the air;
- transmission of a performance or its recording by cable;
- other communication of performance for general information;
- other possible ways to use the performance.

The exclusive right to a performance does not apply to reproduction, broadcasting or transmission by cable, as well as public performance of a recording of a performance, in the event that such a recording was made with the consent of the performer, and its reproduction, broadcasting or transmission by cable, or public performances are carried out for the same purposes for which the performer's consent was obtained when recording the performance.

The conclusion of a contract for a performance as part of an audiovisual work between a performer and a producer of an audiovisual work shall entail the granting by

the performer to the producer of an audiovisual work of the exclusive right to use the performance as part of an audiovisual work, unless otherwise provided by the contract.

The granting of such a right by the performer is limited to the use of the audiovisual work and, unless otherwise provided by the contract, does not include the rights to separate use of sound or images recorded in the audiovisual work.

2.2.5. Related rights to joint performance

Related rights to joint performance belong jointly to the members of the group of performers who took part in its creation, including the production director of the performance, conductor, performers, regardless of whether such performance forms an inseparable whole or consists of elements, each of which has an independent meaning.

Related rights to joint performance shall be exercised by the head of the group of performers, and in his absence - jointly by members of the group of performers, unless otherwise provided by the agreement between them.

If a joint performance forms an inseparable whole, then none of the members of the group of performers has the right, without sufficient reason, to prohibit other members of the group of performers from using this performance.

2.2.6. Exclusive right to a phonogram

The producer of a phonogram or other rightholder shall have the exclusive right to a phonogram.

The exclusive right to a phonogram means the right of a phonogram producer or other rightholder to use a phonogram at his own discretion in any form and in any way. In this case, the producer of the phonogram or other copyright holder has the right to authorize or prohibit other persons to use the phonogram.

The use of a phonogram is recognized as:

- reproduction of a phonogram;

- distribution of copies of a phonogram through sale or other transfer of ownership;
- import into the territory of the Republic of Belarus of copies of a phonogram, including copies made with the permission of the phonogram producer or other rightholder;
- rental of copies of the phonogram;
- public performance of a phonogram;
- broadcasting the phonogram;
- phonogram transmission via cable;
- phonogram message for general information;
- processing of the phonogram;
- other possible ways of using the phonogram.

2.2.7. Exclusive right to transfer to broadcasting or cablecasting organizations

The broadcasting or cablecasting organization or other rightholder shall have the exclusive right to broadcast.

The exclusive right to transmission means the right of the broadcasting or cablecasting organization or other copyright holder to use the transmission at their discretion in any form and in any way. At the same time, the broadcasting or cable broadcasting organization or other rightholder has the right to authorize or prohibit other persons to use the program.

The use of the transfer is recognized:

- transmission recording;
- playback of the recording of the program;
- distribution of the recording of the broadcast or copies of the recording of the broadcast through sale or other transfer of ownership;
- rental of copies of the recording of the program;
- public performance of the program in places with paid entrance;

- broadcasting or transmission by cable by another broadcasting or cablecasting organization;
- broadcast recording message to the public;
- other possible ways to use the transfer.

2.2.8. Term of validity of related rights

Personal non-property rights of the performer are protected indefinitely.

The exclusive right to a performance is valid for fifty years from the date of the performance, either the first fixation of the performance, or the first broadcast of the performance, or by cable, or by any other means of communication to the public.

The exclusive right to a phonogram is valid for fifty years from the date of the first publication of the phonogram, or for fifty years after its first recording, if the phonogram has not been published within this period.

The exclusive right to the transmission of an on-air or cable broadcasting organization shall be valid for fifty years, respectively, from the moment of the broadcast or from the moment of the broadcast by cable.

The calculation of the time limits provided for in this article begins on January 1 of the year following the year in which the legal fact took place, which is the basis for the beginning of the course of the corresponding period.

2.2.9. Transfer of objects of related rights into the public domain

The expiration of the exclusive right to objects of related rights means the transfer of these objects into the *public domain*.

Objects of related rights that have never been protected on the territory of the Republic of Belarus are also considered to have passed into the public domain.

Objects of related rights that have passed into the public domain may be freely used by any natural or legal person without payment of remuneration. In this case, the personal non-property rights of the performers must be respected.

2.3. Free use of objects of copyright and related rights

2.3.1. General provisions

In all cases of free use of works and performances, the personal non-property rights of authors and performers of the works and performances used must be respected.

It is allowed to reproduce excerpts from legally published works (quotation) in the original and translation for research, educational, polemical, critical or informational purposes to the extent that is justified by the purpose of quotation.

Originals of works of fine art, originals of manuscripts of works of writers, composers and scientists may be publicly displayed by a person who legally owns the original work, as well as reproduced in catalogs of exhibitions and publications dedicated to collections of such works, including in the case when the exclusive right to the work has not passed to the person who legitimately owns the original of such work.

It is allowed to reproduce a lawfully published work for the purposes of administrative, criminal, constitutional, civil proceedings, economic proceedings, as well as in the framework of arbitration proceedings.

A piece of music may be publicly performed during a religious ceremony or funeral to the extent justified by the nature of such a ceremony. In this case, the indication of the author and source of borrowing is optional.

Public performance of works by non-professional performers and non-professional (amateur) collectives of artistic creativity, including students, pupils, pedagogical and other employees of educational institutions, is allowed, provided that such use of works does not pursue the goal of making a profit.

A photographic work, works of architecture, fine art may be reproduced, transmitted by air or by cable, as well as communicated for general information in any other way if such works are permanently located in a place open to free access. At the same time, the image of such works should not be the main object of reproduction,

broadcasting, transmission by cable or other message for general information, and also should not be used for commercial purposes.

2.3.2. Free use of works in the mass media

Articles lawfully published in newspapers or magazines on current economic, political, social and religious issues, as well as works of the same nature, lawfully broadcast or by cable, or lawfully posted for general information on the global computer network Internet, may be reproduced in printed media, broadcast or by cable by electronic media, as well as communicated to the public in a different way in the case when such actions were not specifically prohibited by the author or other rightholder of the relevant work.

Publicly delivered political speeches, addresses, reports and other similar works can be reproduced in print media, broadcast or by cable by electronic media, and also communicated to the public in any other way to the extent that is justified by the informational purpose.

2.3.3. Free use of works for the blind, visually impaired and other persons with disabilities to perceive visual information

In order to provide access for the blind, visually impaired and other persons with visual disabilities to legally published works, such works can be converted into a special format (bumpy font, embossed graphics, tactile editions, special audio formats, "clear language" and etc.), intended for perception by such persons, are reproduced and also communicated for general information in the specified format. When converting works into a special format, it is possible to use them in translation.

When reproducing works in a special format, each copy must contain an indication that this copy is intended for the blind, visually impaired and other persons with disabilities to perceive visual information.

2.3.4. Reproduction of works and objects of related rights for personal purposes

It is allowed without the consent of the author or other rightholder to reproduce lawfully published works and objects of related rights in single copies by an individual solely for personal purposes (for personal use, without directly or indirectly pursuing commercial purposes).

The provisions shall not apply to reproduction:

- works of architecture in the form of buildings or other structures;
- databases or their essential parts;
- computer programs;
- music texts and books (in full) through reproduction;
- an audiovisual work, a dramatic or musical-dramatic work, a work of choreography, a pantomime or other script work by video recording during its public performance in a place open to the public, or a place where there are persons who do not belong to the ordinary circle of the family or close friends of the family of a person recording video.

2.3.5. Free use of works for educational and research purposes

Legally published works can be used with the obligatory indication of the author of the work and the source of borrowing as illustrations in publications, radio and television broadcasts, sound and video recordings of an educational nature in an amount justified by an educational purpose.

Articles and other small-volume works lawfully published in collections, as well as in newspapers, magazines and other print media, excerpts from lawfully published literary and other works may be reproduced through reproduction and other reproduction for educational and research purposes.

It is allowed to reproduce and distribute as part of educational publications intended for use in the educational process, small-volume works, as well as parts of

legally published works in the amount justified by the educational purpose, with the obligatory indication of their authors and sources of borrowing.

2.3.6. Free use of works by libraries and archives

It is allowed without the consent of the author or other rightholder and without payment of royalties, but with the obligatory indication of the author of the work, the provision by libraries of copies of lawfully published works for temporary free use. At the same time, copies of works expressed in electronic form provided by libraries for temporary free use, including through the mutual use of library resources, can be provided only in the premises of libraries, including using local computer networks, as well as remote access, subject to use technical means of protecting copyright or related rights, which exclude the possibility for users to create full copies of these works on paper or in electronic form.

Libraries and archives may carry out reproduction and other reproduction without the purpose of deriving profit from lawfully published works for the acquisition of library and archival funds, replacement of lost, destroyed, or become unusable copies of works.

Articles and other small-volume works lawfully published in collections, as well as newspapers, magazines and other printed media, excerpts from lawfully published literary and other works may be reproduced by reproduction and other reproduction without the purpose of making a profit by libraries or archives upon request individuals and legal entities for educational and research purposes.

2.3.7. Recording of a work by broadcasting or cablecasting organizations

An organization of on-air or cable broadcasting, without the consent of the author or other rightholder and without paying them additional remuneration, may record for short-term use a work in respect of which this organization has received the right to broadcast or transmit by cable, provided that such recording is carried out a broadcasting or cablecasting organization using its own equipment and for use in its own broadcasts.

The broadcasting or cablecasting organization shall be obliged to destroy such a recording of a work within six months after its production, unless a longer period has been agreed with the author or other rightholder of the recorded work. Such a recording may be retained by the broadcasting or cablecasting organization without the consent of the author or other copyright holder of the work for archival purposes, if it is exclusively documentary in nature.

2.3.8. Free use of computer programs and databases

A person who lawfully owns a copy of a computer program or database has the right to make a copy of a computer program or database, provided that this copy is intended only for archival purposes or to replace a lawfully acquired copy in cases where the original computer program or database is lost or destroyed or has become unusable. At the same time, such a copy of a computer program or database cannot be used for other purposes and must be destroyed if the possession of a copy of this computer program or database ceases to be legitimate.

A person who lawfully owns a copy of a computer program has the right to adapt a computer program, that is, to customize a computer program without changing its source code solely for the purpose of its functioning on the user's technical devices and ensuring joint work with other computer programs, or to make changes to the computer program in if a computer program was delivered together with open source code and (or) such a person was granted the right to process it, as well as to carry out actions necessary for the functioning of such a program in accordance with its purpose, including recording and storing in the computer memory (one computer or one user of a computer network), unless otherwise provided by an agreement with the author or other rightholder, provided thatthat the information obtained during the performance of these actions will not be used to create other computer programs similar to the adaptable one, or to carry out any action that violates copyright.

2.3.9. Free reproduction of objects of copyright or related rights in the course of technological processes of data transmission

It is not required to obtain permission from the author or other rightholder and to pay remuneration for the reproduction of objects of copyright or related rights in the case when such reproduction is temporary and constitutes an integral essential part of the technological process of data transmission, with the sole purpose of legitimate use of records of objects of copyright or related rights, including their legitimate communication to the public.

2.3.10. Use of a phonogram published for commercial purposes without the consent of the phonogram producer and performer

Allowed without the consent of the producer of a phonogram published for commercial purposes, and the performer whose performance is recorded on such a phonogram, but with payment of remuneration to them:

- public performance of a phonogram;
- transmission of a phonogram on the air or by cable;
- other message of the phonogram for general information.

For the purposes of this Law, phonograms made available to the public by wire or wireless communication in such a way that members of the public can access them from any place and at any time of their own choice, are treated as if they were published in commercial purposes.

Payment of the remuneration provided for in part one of paragraph 1 of this article shall be carried out by persons using the phonogram in the indicated ways.

The collection, distribution and payment of such remuneration shall be carried out by the organization for the collective management of property rights.

2.4. Transfer of the exclusive right

2.4.1. Transfer of the exclusive right by inheritance or by way of other legal succession. Protection of personal non-property rights of authors and performers after their death

The exclusive right to an object of copyright or related rights shall pass by inheritance or by way of other succession, unless otherwise provided by this Law.

Protection of personal non-property rights of authors and performers after their death is carried out without limitation of the term by their heirs or executors of the will, and in their absence - by the authorized republican government body that conducts state policy and implements the function of state regulation in the field of protection of intellectual property rights (hereinafter - the authorized state body).

2.4.2. Agreement on assignment of exclusive rights

Under an agreement on the assignment of an exclusive right, the author or other rightholder alienates the exclusive right to an object of copyright or related rights in full to the acquirer for the entire duration of the copyright (related rights).

Unless otherwise provided by the agreement on the assignment of the exclusive right, the exclusive right to the object of copyright or related rights shall pass from the author or other rightholder to the acquirer from the moment of the conclusion of the agreement.

An agreement on the assignment of an exclusive right must contain a condition on the amount of remuneration or on the procedure for determining it, or a direct indication of gratuitousness.

An agreement on the assignment of an exclusive right is concluded in writing.

2.4.3. License agreement

Under a license agreement, the author or other copyright holder (licensor) grants the user (licensee) the right to use the object of copyright or related rights.

The license agreement must provide for specific ways of using the object of copyright or related rights.

Under an exclusive license agreement, the licensor grants the licensee the right to use an object of copyright or related rights in a certain way within the limits established by this agreement.

At the same time, the licensor does not have the right to use and authorize other persons to use the copyright or related rights object in the part provided to the licensee, but retains the right to use and allow other persons to use the copyright or related rights object in the part that is not provided to the licensee.

Under a simple (non-exclusive) license agreement, the licensor grants the licensee the right to use an object of copyright or related rights, with the licensor retaining the right to use the object of copyright or related rights and the right to issue a license to other persons.

The license agreement is assumed to be compensated, unless otherwise provided by this agreement. The remuneration is determined in the license agreement as a percentage of income for the corresponding way of using the copyright or related rights object, either in the form of a fixed amount or in another way.

If the author's remuneration is determined in the form of a fixed amount in the license agreement concluded by the author on the reproduction of a work, then the maximum number of reproduced copies of the work must be established in it.

The license agreement must, and the license agreement concluded by the author, may contain conditions on the terms of their validity and on the territory in which the use of the object of copyright or related rights is allowed.

If the license agreement concluded by the author does not contain a term for its validity, then this agreement is considered concluded for three years.

If the license agreement concluded by the author does not contain a condition on the territory in which the use of the work is allowed, then the validity of this agreement is limited to the territory of the Republic of Belarus.

The licensee has the right to grant other persons (sub-licensees) the right to use the object of copyright or related rights only if it is expressly provided for by the license agreement, and within the powers granted to the licensee by this agreement.

If the author has granted the right to conclude a sub-license agreement to the licensee, then the license agreement shall indicate the share of the remuneration received by the licensee from the sub-licensee, which the licensee must pay to the author. The remuneration received by the author for the use of the work by the sub-licensee may not be less than the remuneration that the licensee must pay for the corresponding method of using the work in accordance with the terms of the license agreement, unless otherwise expressly provided for by the license agreement.

The conclusion of a license agreement on the granting of the right to use a computer program or database is allowed by the conclusion of each licensee with the corresponding licensor of an accession agreement, the terms of which are set forth on the purchased copy of the computer program or database or on the packaging of each copy or attached to each copy. The licensee begins to use such a computer program or database as consent to enter into an agreement.

2.4.4. Open License

A license agreement, according to which the author or other rightholder (licensor) provides the licensee with a simple (non-exclusive) license to use the object of copyright or related rights, may be concluded in a simplified manner (*open license*).

An open license is a contract of adhesion. All the terms of such an agreement must be available to an indefinite circle of persons and placed in such a way that the licensee has the opportunity to familiarize himself with them before using the corresponding object of copyright or related rights.

The beginning of the use of an object of copyright or related rights is an acceptance of the terms of an open license. An open license may contain an indication of other actions, the commission of which will be considered acceptance of its terms. The license agreement is considered concluded from the moment the licensee performs the specified actions.

An open license is free of charge, unless otherwise provided by its terms.

If the validity period of an open license is not determined, then the license agreement is considered concluded in relation to computer programs and databases for the entire period of validity of the exclusive right, and in relation to other types of works and objects of related rights - for five years.

If the open license does not indicate the territory in which the use of the object of copyright or related rights is allowed, such use is allowed on the territory of any country.

UNIT 3. INDUSTRIAL PROPERTY

3.1. Invention: international and national procedure of patenting

An invention in any field of technology is granted legal protection if it relates to a product or method, is *new, involves an inventive step and is industrially applicable.* «Product» means an object as a result of human labor, «method» is a process, technique or method for performing interrelated actions on an object (objects), as well as the application of a process, technique, method or product for a specific purpose.

A patent is a document certifying the rights to an invention or other industrial property subject to patenting.

A patent can be obtained through a national or international procedure.

National procedure is based on national legislation. In the Republic of Belarus, the procedure for patenting is regulated by Civil Code (1998), Law of the Republic of Belarus «On Patents for Inventions, Utility Models, Industrial Designs» (2002).

The application is submitted to the *National Center for Intellectual Property* (https://www.ncip.by).

To patent the invention the application must contain:

- an application for a patent of the Republic of Belarus for an invention;
- description of the invention, disclosing it in sufficient detail to carry out the invention. The description begins with the name of the invention indicated in the application for a patent of the Republic of Belarus for an invention, the heading index of the current edition of the International Patent Classification (hereinafter - the IPC);
- the claims expressing its essence and fully based on the description;
- drawings, if they are necessary for understanding the essence of the invention;
- essay.

The following documents are attached to the application:

- a document confirming the payment of the patent fee for filing and conducting a preliminary examination of the application in the prescribed amount or exemption from paying the patent fee, or a document confirming the partial payment of the patent

fee, along with documents confirming the existence of grounds for reducing its amount (requisites for paying patent fees)

- power of attorney in case of filing an application through a patent attorney
- certified copy of the first application in case of claiming priority under the Paris Convention for the Protection of Industrial Property of March 20, 1883.

Invention patent is valid for 20 years from the date of filing an application for a patent (hereinafter referred to as the application). At the request of the patent owner, the validity of a patent for an invention relating to a medicinal product, pesticide or agrochemical may be extended, but not more than for five years.

International procedure of patenting is usually based on international conventions and agreements (see 1.3. Basic international acts in the field of intellectual property).

Let's look at the main provisions of the *Paris Convention for the Protection of Industrial Property of March 20, 1883 (as amended on September 28, 1979).*

According to this Convention the countries to which this Convention applies constitute a Union for the protection of industrial property.

The protection of industrial property has as its object *patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.*

Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.

Any person who has duly filed an *application for a patent*, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, *a right of priority* during the periods hereinafter fixed.

Any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority.

By a regular national filing is meant any filing that is adequate to establish the date on which the application was filed in the country concerned, whatever may be the subsequent fate of the application.

Consequently, any subsequent filing in any of the other countries of the Union before the expiration of the periods referred to above shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention, the putting on sale of copies of the design, or the use of the mark, and such acts cannot give rise to any third-party right or any right of personal possession. Rights acquired by third parties before the date of the first application that serves as the basis for the right of priority are reserved in accordance with the domestic legislation of each country of the Union.

The periods of priority referred to above shall be twelve months for patents and utility models, and six months for industrial designs and trademarks.

These periods shall start from the date of filing of the first application; the day of filing shall not be included in the period.

If the last day of the period is an official holiday, or a day when the Office is not open for the filing of applications in the country where protection is claimed, the period shall be extended until the first following working day.

Any person desiring to take advantage of the priority of a previous filing shall be required to make a declaration indicating the date of such filing and the country in which it was made. Each country shall determine the latest date on which such declaration must be made.

These particulars shall be mentioned in the publications issued by the competent authority, and in particular in the patents and the specifications relating thereto.

The countries of the Union may require any person making a declaration of priority to produce a copy of the application (description, drawings, etc.) previously filed. The copy, certified as correct by the authority which received such application, shall not require any authentication, and may in any case be filed, without fee, at any time within three months of the filing of the subsequent application. They may require

it to be accompanied by a certificate from the same authority showing the date of filing, and by a translation.

No other formalities may be required for the declaration of priority at the time of filing the application. Each country of the Union shall determine the consequences of failure to comply with the formalities prescribed by this Article, but such consequences shall in no case go beyond the loss of the right of priority.

Subsequently, further proof may be required. Where an industrial design is filed in a country by virtue of a right of priority based on the filing of a utility model, the period of priority shall be the same as that fixed for industrial designs.

Furthermore, it is permissible to file a utility model in a country by virtue of a right of priority based on the filing of a patent application, and vice versa.

No country of the Union may refuse a priority or a patent application on the ground that the applicant claims multiple priorities, even if they originate in different countries, or on the ground that an application claiming one or more priorities contains one or more elements that were not included in the application or applications whose priority is claimed, provided that, in both cases, there is unity of invention within the meaning of the law of the country.

With respect to the elements not included in the application or applications whose priority is claimed, the filing of the subsequent application shall give rise to a right of priority under ordinary conditions.

If the *examination* reveals that an application for a patent contains more than one invention, the applicant may divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any.

The applicant may also, on his own initiative, divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of priority, if any. Each country of the Union shall have the right to determine the conditions under which such division shall be authorized.

Priority may not be refused on the ground that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the

application in the country of origin, provided that the application documents as a whole specifically disclose such elements.

Applications for *inventors' certifi*cates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.

In a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate, an applicant for an inventor's certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model, or an inventor's certificate.

Patents applied for in the various countries of the Union by nationals of countries of the Union shall be independent of patents obtained for the same invention in other countries, whether members of the Union or not.

Patents obtained with the benefit of priority shall, in the various countries of the Union, have a duration equal to that which they would have, had they been applied for or granted without the benefit of priority.

The inventor shall have the right to be mentioned as such in the patent.

The grant of a patent shall not be refused and a patent shall not be invalidated on the ground that the sale of the patented product or of a product obtained by means of a patented process is subject to restrictions or limitations resulting from the domestic law.

Importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail forfeiture of the patent.

Each country of the Union shall have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work.

Forfeiture of the patent shall not be provided for except in cases where the grant of compulsory licenses would not have been sufficient to prevent the said abuses. No proceedings for the forfeiture or revocation of a patent may be instituted before the expiration of two years from the grant of the first compulsory license.

A compulsory license may not be applied for on the ground of failure to work or insufficient working before the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last; it shall be refused if the patentee justifies his inaction by legitimate reasons. Such a compulsory license shall be non-exclusive and shall not be transferable, even in the form of the grant of a sub-license, except with that part of the enterprise or goodwill which exploits such license.

The foregoing provisions shall be applicable, mutatis mutandis, to utility models.

The protection of industrial designs shall not, under any circumstance, be subject to any forfeiture, either by reason of failure to work or by reason of the importation of articles corresponding to those which are protected.

If, in any country, use of the registered mark is compulsory, the registration may be cancelled only after a reasonable period, and then only if the person concerned does not justify his inaction.

Use of a trademark by the proprietor in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered in one of the countries of the Union shall not entail invalidation of the registration and shall not diminish the protection granted to the mark.

Concurrent use of the same mark on identical or similar goods by industrial or commercial establishments considered as co-proprietors of the mark according to the provisions of the domestic law of the country where protection is claimed shall not prevent registration or diminish in any way the protection granted to the said mark in any country of the Union, provided that such use does not result in misleading the public and is not contrary to the public interest.

No indication or mention of the patent, of the utility model, of the registration of the trademark, or of the deposit of the industrial design, shall be required upon the goods as a condition of recognition of the right to protection.

A period of grace of not less than six months shall be allowed for the payment of the fees prescribed for the maintenance of industrial property rights, subject, if the domestic legislation so provides, to the payment of a surcharge.

The countries of the Union shall have the right to provide for the restoration of patents which have lapsed by reason of non-payment of fees.

To obtain a patent that is valid simultaneously in many countries of the world, it is possible to file an international patent application according to *Patent Cooperation Treaty (PCT) (1970).*

Let's look at the main provisions of the Patent Cooperation Treaty (PCT).

The States party to this Treaty (hereinafter called «the Contracting States») constitute a Union for cooperation in the filing, searching, and examination, of applications for the protection of inventions, and for rendering special technical services. The Union shall be known as the International Patent Cooperation Union.

Applications for the protection of inventions in any of the Contracting States may be filed as international applications under this Treaty.

An international application shall contain, as specified in this Treaty and the Regulations, a request, a description, one or more claims, one or more drawings (where required), and an abstract.

The abstract merely serves the purpose of technical information and cannot be taken into account for any other purpose, particularly not for the purpose of interpreting the scope of the protection sought.

The international application shall:

- be in a prescribed language;
- comply with the prescribed physical requirements;
- comply with the prescribed requirement of unity of invention;
- be subject to the payment of the prescribed fees.

The request shall contain:

- a petition to the effect that the international application be processed according to this Treaty;

- the designation of the Contracting State or States in which protection for the invention is desired on the basis of the international application («designated States»); if for any designated State a regional patent is available and the applicant wishes to obtain a regional patent rather than a national patent, the request shall so indicate; if, under a treaty concerning a regional patent, the applicant cannot limit his application to certain of the States party to that treaty, designation of one of those States and the indication of the wish to obtain the regional patent shall be treated as designation of all the States party to that treaty; if, under the national law of the designated State, the designation of that State has the effect of an application for a regional patent, the designation of the said State shall be treated as an indication of the wish to obtain the regional patent;

- the name of and other prescribed data concerning the applicant and the agent (if any);

- the title of the invention;

- the name of and other prescribed data concerning the inventor where the national law of at least one of the designated States requires that these indications be furnished at the time of filing a national application. Otherwise, the said indications may be furnished either in the request or in separate notices addressed to each designated Office whose national law requires the furnishing of the said indications but allows that they be furnished at a time later than that of the filing of a national application.

Every designation shall be subject to the payment of the prescribed fee within the prescribed time limit.

Unless the applicant asks for any of the other kinds of protection referred to in Article 43, designation shall mean that the desired protection consists of the grant of a patent by or for the designated State. For the purposes of this paragraph, Article 2(ii) shall not apply.

Failure to indicate in the request the name and other prescribed data concerning the inventor shall have no consequence in any designated State whose national law requires the furnishing of the said indications but allows that they be furnished at a time later than that of the filing of a national application. Failure to furnish the said indications in a separate notice shall have no consequence in any designated State whose national law does not require the furnishing of the said indications.

The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

The drawings shall be required when they are necessary for the understanding of the invention.

Any resident or national of a Contracting State may file an international application. The Assembly may decide to allow the residents and the nationals of any country party to the Paris Convention for the Protection of Industrial Property which is not party to this Treaty to file international applications.

The international application shall be filed with the prescribed receiving Office, which will check and process it as provided in this Treaty and the Regulations.

Each international application shall be the subject of *international search.*

The objective of the international search is to discover relevant prior art.

International search shall be made on the basis of the claims, with due regard to the description and the drawings (if any).

International search shall be carried out by an *International Searching Authority*, which may be either a national Office or an intergovernmental organization, such as the International Patent Institute, whose tasks include the establishing of documentary search reports on prior art with respect to inventions which are the subject of applications.

Procedure before the International Searching Authority shall be governed by the provisions of this Treaty, the Regulations, and the agreement which the International Bureau shall conclude, subject to this Treaty and the Regulations, with the said Authority.

The international search report shall be established within the prescribed time limit and in the prescribed form.

The International Bureau shall *publish international applications.*

International preliminary examination shall be carried out by the International Preliminary Examining Authority.

The objective of the international preliminary examination is to formulate a preliminary and non-binding opinion on the questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), and to be industrially applicable.

For the purposes of the international preliminary examination, a claimed invention shall be considered *novel* if it is not anticipated by the prior art as defined in the Regulations.

For the purposes of the international preliminary examination, a claimed invention shall be considered to involve *an inventive step* if, having regard to the prior art as defined in the Regulations, it is not, at the prescribed relevant date, obvious to a person skilled in the art.

For the purposes of the international preliminary examination, a claimed invention shall be considered *industrially applicable* if, according to its nature, it can be made or used (in the technological sense) in any kind of industry. "Industry" shall be understood in its broadest sense, as in the Paris Convention for the Protection of Industrial Property.

The criteria described above merely serve the purposes of international preliminary examination. Any Contracting State may apply additional or different criteria for the purpose of deciding whether, in that State, the claimed invention is patentable or not.

The international preliminary examination shall take into consideration all the documents cited in the international search report. It may take into consideration any additional documents considered to be relevant in the particular case.

The *international preliminary examination report* shall be established within the prescribed time limit and in the prescribed form.

The international preliminary examination report, together with the prescribed annexes, shall be transmitted to the applicant and to the International Bureau.

It shall state, whether the claim appears to satisfy the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined for the purposes of the international preliminary examination.

The international preliminary examination report, together with the prescribed annexes, shall be transmitted to the applicant and to the International Bureau.

3.2. Industrial Designs

Industrial designs are regulated in the Republic of Belarus by the Law of the Republic of Belarus «On Patents for Inventions, Utility Models, Industrial Uses» (2002).

An *industrial design* is recognized as an artistic or artistic design solution of a product that determines its appearance and is new and original. In this case, the product is understood as an object of industrial or handicraft production.

An application for a patent of the Republic of Belarus for an industrial design is submitted to the *National Center for Intellectual Property.*

An application for an industrial design must relate to one industrial design or a group of industrial designs belonging to the same class of the International Classification for Industrial Designs (ICCD).

The application must contain:

- an application for the grant of a patent indicating the author (co-authors) of the industrial design and the person (persons) in whose name (whom) the patent is requested, as well as their place of residence or location
- a set of images that give a complete detailed idea of the appearance of the product, its aesthetic features, in particular the shape and configuration, ornament and color combination.

The following documents are attached to the application:

- a document confirming the payment of a patent fee in the established amount or exemption from paying a patent fee, or a document confirming partial payment of a patent fee, along with documents confirming the existence of grounds for reducing its amount (details for paying patent fees);
- power of attorney, when filing an application through a patent attorney.

For the *international registration* of industrial designs, *the Hague System for the International Registration of Industrial Designs applies*.

3.3. Topology of integrated circuits

Topology of integrated circuits are regulated in the Republic of Belarus by the Law of the Republic of Belarus Law «On the legal protection of topologies of integrated circuits» (1998).

The topology of an integrated circuit is a spatial-geometric arrangement of a set of elements of an integrated circuit and the connections between them fixed on a material carrier.

An application for registration of the topology of an integrated circuit (IC) is submitted to the *National Center for Intellectual Property*.

The application must contain the following documents:

- an application for registration of the topology of an integrated circuit;
- deposited materials containing a set of one of the following types of materials:
- photographs of photomasks;
- assembly topological drawing;
- layered topological drawings;
- photographs of each topology layer;
- IC samples with this topology if it was used before the date of filing the application;
- essay;
- power of attorney (in case of filing an application by a patent attorney).

The application is accompanied by a document confirming the payment of the patent fee (copy of the payment order or bank receipt marked by the bank), or a document confirming the grounds for exemption from paying it or paying a smaller amount (details for paying patent fees).

3.4. Trademarks

Trademarks are signs that help distinguish one person's goods or services from similar goods and services of others.

As trademarks, verbal designations, including proper names, color combinations, alphabetic, digital, figurative, three-dimensional designations, including the shape of a product or its packaging, as well as combinations of such designations, can be registered.

Legal protection of trademarks is carried out on the basis of their registration in accordance with national legislation or international agreements.

In the Republic of Belarus, trademarks are protected on the basis of the national belarusian law « On Trademarks» (1993).

In the Republic of Belarus, trademarks are registered at the *National Center for Intellectual Property.*

A trademark can be registered in the name of an organization or an individual.

Application and accompanying documents according to the national procedure:

- an application with the obligatory indication of the applicant, his location or place of residence, the declared designation and the list of goods and (or) services indicating the class (classes) in accordance with the International Classification of Goods and Services (ICGS). In this case, the applicant gives written consent to the collection, processing, accumulation, storage and distribution of his personal data
- a document confirming the payment of the patent fee in the prescribed amount (details for the payment of patent fees)

- additional copies of the trademark image power of attorney when filing an application through a patent attorney (an approximate list of powers to be indicated in the power of attorney);
- a certified copy of the first application in case of filing an application under the Paris Convention for the Protection of Industrial Property (convention application);
- documents confirming the legitimacy of requesting exhibition priority;
- provision on the collective mark, if the application is filed for a collective mark.

To register trademarks, it is recommended to use:

- Manager of goods and services of the World Intellectual Property Organization
- International classifier of goods and services (MKTU).

A trademark may be registered in accordance with international agreements, in particular the *Paris Convention for the Protection of Industrial Property*, the *Madrid Agreement Concerning the International Registration of Marks (1891)* and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989).

Let's look at the main provisions of Madrid Agreement Concerning the International Registration of Marks (1891).

Nationals of any of the contracting countries may, in all the other countries party to this agreement, secure protection for their marks applicable to goods or services, registered in the country of origin, by filing the said marks at the International Bureau of Intellectual Property (the International Bureau) referred to in the Convention establishing the World Intellectual Property Organization, through the intermediary of the Office of the said country of origin.

Every *application for international registration* must be presented on the form prescribed by the Regulations; the Office of the country of origin of the mark shall certify that the particulars appearing in such application correspond to the particulars in the national register, and shall mention the dates and numbers of the filing and registration of the mark in the country of origin and also the date of the application for international registration.

The applicant must indicate the goods or services in respect of which protection of the mark is claimed and also, if possible, the corresponding class or classes according to the classification established by the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. If the applicant does not give such indication, the International Bureau shall classify the goods or services in the appropriate classes of the said classification. The indication of classes given by the applicant shall be subject to control by the International Bureau, which shall exercise the said control in association with the national Office. In the event of disagreement between the national Office and the International Bureau, the opinion of the latter shall prevail.

From the date of the registration so effected at the International Bureau, the protection of the mark in each of the contracting countries concerned shall be the same as if the mark had been filed therein direct.

When a mark already filed in one or more of the contracting countries is later registered by the International Bureau in the name of the same proprietor or his successor in title, the international registration shall be deemed to have replaced the earlier national registrations, without prejudice to any rights acquired by reason of such earlier registrations.

The national Office shall, upon request, be required to take note in its registers of the international registration.

Registration of a mark at the International Bureau is effected for *twenty years*, with the possibility of renewal.

Upon expiration of a period of five years from the date of the international registration, such registration shall become independent of the national mark registered earlier in the country of origin, subject to the following provisions.

Any *registration may be renewed* for a period of twenty years from the expiration of the preceding period, by payment only of the basic fee and, where necessary, of the supplementary and complementary fees.

Renewal may not include any change in relation to the previous registration in its latest form. Six months before the expiration of the term of protection, the International

Bureau shall, by sending an unofficial notice, remind the proprietor of the mark and his agent of the exact date of expiration.

Subject to the payment of a surcharge fixed by the Regulations, a period of grace of six months shall be granted for renewal of the international registration.

The Office of the country of origin may fix, at its own discretion, and collect, for its own benefit, a national fee which it may require from the proprietor of the mark in respect of which international registration or renewal is applied for.

Registration of a mark at the International Bureau shall be subject to the *advance payment* of an international fee which shall include:

- a basic fee
- a supplementary fee for each class of the International Classification, beyond three, into which the goods or services to which the mark is applied will fall
- a complementary fee for any request for extension of protection under Article 3ter.

The person in whose name the international registration stands may at any time renounce protection in one or more of the contracting countries by means of a declaration filed with the Office of his own country, for communication to the International Bureau, which shall notify accordingly the countries in respect of which renunciation has been made. Renunciation shall not be subject to any fee.

The Office of the country of the person in whose name the international registration stands shall likewise notify the International Bureau of all annulments, cancellations, renunciations, transfers, and other changes made in the entry of the mark in the national register, if such changes also affect the international registration.

The Bureau shall record those changes in the International Register, shall notify them in turn to the Offices of the contracting countries, and shall publish them in its journal.

When a mark registered in the International Register is transferred to a person established in a contracting country other than the country of the person in whose name the international registration stands, the transfer shall be notified to the International Bureau by the Office of the latter country. The International Bureau shall record the

transfer, shall notify the other Offices thereof, and shall publish it in its journal. If the transfer has been effected before the expiration of a period of five years from the international registration, the International Bureau shall seek the consent of the Office of the country of the new proprietor, and shall publish, if possible, the date and registration number of the mark in the country of the new proprietor.

No transfer of a mark registered in the International Register for the benefit of a person who is not entitled to file an international mark shall be recorded.

The advantages of an international registration, in addition to the above (single application), are:

- payment of the fee in a single currency (Swiss francs)
- centralized management of international registration (submission to the International Bureau of WIPO of a single request for amendments, renewal of registration, etc. without the mediation of patent attorneys in the indicated countries)
- the possibility of a subsequent territorial expansion of trademark protection (indication of countries not included in the international application initially).

3.5. Geographical indications

Geographical Indications are regulated by the Law of the Republic of Belarus «On Geographical Indications» (2002).

A geographical indication is a designation that identifies a product as originating in the territory of a specific geographical area, if the quality, reputation or other characteristics of the product are largely due to its geographical origin.

The geographical indication includes the name of the place of origin of the goods.

An appellation of origin is a designation that is or contains a modern or historical, official or unofficial, full or abbreviated name of a geographical object, as well as a designation derived from such an name and made known as a result of its use in relation to a product whose special properties are exclusively or are mainly determined by the natural conditions and (or) human factors characteristic of a given geographical object.

The application must contain:

- an application for granting the right to use a geographical indication indicating the applicant (applicants), as well as his (their) location or place of residence. At the same time, the applicant (applicants) gives (give) written consent to the collection, processing, accumulation, storage and distribution of his (their) personal data
- the applied designation or geographical indication, if already registered in the Register
- an indication of the goods for the designation of which the granting of the right to use a geographical indication is requested
- indication of the place of production (origin) of the goods (borders of a geographical object)
- description of the special properties, quality, reputation or other characteristics of the goods, largely due to its geographical origin, natural conditions and (or) human factors characteristic of this geographical object.

The following documents must be attached to the application:

- for the national applicant - the conclusion of the competent authority that the product produced by the national applicant has special properties, quality, reputation or other characteristics of the product, largely due to its geographical origin, natural conditions and (or) human factors characteristic of this geographical object
- for a foreign applicant - a document confirming his right to use the declared geographical indication in the country of origin of the goods
- a document confirming the payment of the fee in the prescribed amount (details for the payment of patent fees)
- power of attorney, if the application is filed through a patent attorney.

An application for granting the right to use a geographical indication is submitted to the *National Center for Intellectual Property*.

UNIT 4. PATENT INFORMATION AND PATENT RESEARCH

Patent information - information contained in patent documentation (a set of patent documents).

Primary patent documents are documents containing primary patent information.

Secondary patent documents - documents containing abbreviated information about the primary patent document.

Patent authorities publish patent information in their official publications. The official publications in the Republic of Belarus are the *official bulletins* of the National Center for Intellectual Property:

- Official bulletin «Inventions. Useful models. Industrial designs. Topologies of integrated circuits»
- Official bulletin «Trademarks and Service Marks. Geographical Indications»
- Official Bulletin «Varieties of Plants».
- descriptions of inventions, utility models, plant varieties to patents of the Republic of Belarus
- bibliographic index of valid patents of the Republic of Belarus for inventions, utility models, industrial designs.

International classifications in the field of industrial property are established by international agreements:

- International Patent Classification
- International Classification of Industrial Designs
- International Classification of Goods and Services for the Registration of Marks.

Patent research is a study of the technical level of technology, its patentability, patent purity and competitiveness.

Patent research is carried out in accordance with the requirements of the legislation.

Based on the results of the patent research, a report is drawn up.

UNIT 5. INTRODUCTION OF INTELLECTUAL PROPERTY OBJECTS INTO CIVIL CIRCULATION. COMMERCIAL USE OF INTELLECTUAL PROPERTY

In the context of the development of innovative technologies, the commercialization of intellectual property objects becomes important.

The commercialization of intellectual property means the use of intellectual property in economic (entrepreneurial) activities in order to make a profit. Commercialization of intellectual property objects is the introduction of intellectual property objects into civil circulation, that is, by transferring them from one business entity to another on a reimbursable basis.

The main ways of introducing intellectual property items into civil circulation are:

- contribution to the statutory fund of commercial organizations
- transfer of rights to use intellectual property objects under license agreements
- assignment of rights to intellectual property
- franchising
- transfer of rights to intellectual property assets as collateral
- use in own production
- other methods.

The necessary prerequisites for the introduction of intellectual property items into civil circulation are:

- documentary establishment of the fact of creation of intellectual property objects
- determination of the owner of the rights to intellectual property
- evaluation of the cost of intellectual property
- registration in accounting as an intangible asset.

Rights to use intellectual property may belong:

- to the author - an individual, whose creative work created the OIP
- legal entity (organization – employer)
- the state

• licensor - an individual or legal entity that has acquired the right to use intellectual property under a license agreement.

When making rights to intellectual property assets as a contribution to the authorized capital of a commercial organization, it is necessary that:

• exclusive rights to intellectual property assets were valued in cash (the issues of assessing exclusive rights to intellectual property items will be discussed in the next topic)

• the right to alienate these rights was not limited by the owner, legislation or contract

• an examination of the reliability of the assessment of this non-monetary contribution was carried out

• rights to objects of industrial property rights (invention, utility model, industrial design, plant variety, integrated circuit topology, trademark and service mark) must be certified by a patent (certificate)

• exclusive rights to objects of industrial property rights (invention, utility model, industrial design, plant variety, integrated circuit topology, trademark and service mark) must be registered

• the rights to intellectual property contributed to the statutory fund must be free from the rights of third parties (they must not be licensed).

Under a *license agreement*, the party that has the exclusive right to use the result of intellectual activity or individualization means (licensor) grants permission to the other party (licensee) to use the corresponding object of intellectual property.

Thus, the parties to the license agreement are the *licensor* - the owner of the rights to the intellectual property and the user.

The license agreement is supposed to be paid, unless otherwise provided by this agreement.

The license agreement may provide for the licensee to:

1) the right to use an intellectual property object with the licensor retaining the right to use it and the right to issue a license to other persons (a simple, non-exclusive license);

2) the right to use an intellectual property object with the licensor retaining the right to use it in the part not transferred to the licensee, but without the right to issue a license to other persons (*exclusive license*);

3) other types of licenses allowed by legislative acts.

Unless otherwise provided in the license agreement, the license is assumed to be simple (*non-exclusive*).

According to the legislation, the patent owner may submit to the patent authority for official publication an application for granting any person the right to use an invention, utility model, industrial design under the terms of a simple, non-exclusive license (*open license*).

A person wishing to use the said invention, utility model, industrial design has the right to demand that the patent owner conclude a license agreement with him on the terms corresponding to those specified in the application for an open license.

An agreement on granting by a licensee the right to use an intellectual property object to another person within the limits determined by the license agreement is recognized as a *sublicense agreement*. The licensee has the right to conclude a sublicense agreement only in cases stipulated by the license agreement. The licensee shall be liable to the licensor for the actions of the sublicensee, unless otherwise provided by the license agreement.

A kind of license agreement is an *author's agreement*.

The author's contract must provide for specific ways of using the work. If the author's agreement is paid, it must provide for the amount of the author's remuneration or the procedure for determining the amount of the author's remuneration for each method of using the work, the procedure and terms for its payment.

The author's agreement may not contain conditions on the period of its validity and on the territory in which the use of the work is allowed.

The license fee can be set in the form of:

• *royalties*

• *lump-sum payments and in kind*

• *combinations of the above forms of remuneration.*

Royalty is a form of license fee paid in the form of periodic (current) deductions. Royalties can be established as a percentage of the price of products produced (sold) under a license or a fixed (fixed) fee per unit of products produced (sold) under a license or another calculation base.

Lump-sum payment is a form of license fee paid in the form of a fixed payment (one-time or in installments) regardless of the results of license development, production volumes or sales of products under the license.

Under *an agreement on the creation and use of an object of copyright or related rights*, the author (performer) undertakes to create a work (performance) within the time period stipulated by the agreement that meets the customer's requirements, and to transfer to the customer the exclusive right to this work (performance), or to provide the customer the right to use it within the limits established by the contract.

The work (performance), the creation of which is stipulated by the contract, must be transferred to the customer within the time period stipulated by the contract.

If the author (performer) does not present the created work (performance) to the customer within the time period stipulated by the contract, he shall be obliged to compensate the real damage caused to the customer, unless he proves that the violation of the time period was not his fault.

The material object in which the work (performance) is embodied is transferred to the customer in ownership, unless otherwise provided by the contract.

Acceptance by the customer of a work (performance) created by the author (performer) in the manner prescribed by the contract entails the transfer to the customer of the exclusive right to this work (performance) or granting to the customer the right to use it on the terms established by the contract.

The contract must contain a condition on the amount of remuneration for the creation of a work (performance) or on the procedure for determining it, as well as a condition on the procedure for its payment.

The contract may provide for the obligation of the customer to pay the author (performer) an advance against the remuneration provided for by the contract for the creation of a work (performance).

The contract may contain a condition on the amount of remuneration for the use of the work (performance) or on the procedure for determining it, or on the free use of the work (performance).

The terms of the contract limiting the author (performer) in the future creation of a work (performance) of a certain kind or in a certain area shall be invalidated.

An agreement obliging the author (performer) to grant the customer exclusive rights to any works (performances) that he creates in the future is null and void.

An agreement on the creation and use of an object of copyright or related rights shall be concluded in writing. A contract that does not meet this requirement is void.

Under an *exclusive right assignment agreement*, one party (right holder) alienates the exclusive right to an object of copyright or related rights in full to the other party for the entire duration of copyright (related rights).

Unless otherwise provided by the contract of assignment of the exclusive right, the exclusive right to the object of copyright or related rights is transferred from the right holder to the other party (the new right holder) from the moment the contract is concluded.

The contract for the assignment of an exclusive right must contain a condition on the amount of remuneration or on the procedure for determining it, or a direct indication of gratuitousness.

Under a *complex business license (franchising) agreement* (hereinafter referred to as the franchising agreement), one party (right holder) undertakes to provide the other party (user) for a fee, for a period specified in the franchising agreement or without specifying a period, a license complex, including the right to use the company name of the right holder, other objects intellectual property provided for by the franchise agreement, as well as undisclosed information in the user's business activities.

The franchise agreement provides for the use of the licensed complex, to a certain extent (with the establishment of a minimum and (or) maximum volume of use), with or without indicating the territory of its use in relation to certain types of entrepreneurial activity.

Parties under a franchise agreement can be commercial organizations and individual entrepreneurs.

The remuneration under the franchising agreement may be paid by the user to the right holder in the form of fixed one-time or periodic payments, deductions from the proceeds, or in another form provided for by the franchising agreement.

UNIT 6. PROTECTION AGAINST UNFAIR COMPETITION

Unfair competition is regulated by the Law of the Republic of Belarus «On countering monopolistic activities and developing competition» (2013).

According to this law *unfair competition* - actions of an economic entity or several economic entities aimed at acquiring advantages (benefits) in entrepreneurial activities that are contrary to this Law, other legislative acts and antimonopoly legislation or the requirements of good faith and reasonableness and may cause or have caused losses to other competitors or may cause or harmed their business reputation.

It is prohibited:

- unfair competition by discrediting, i.e. dissemination by an economic entity of false, inaccurate or distorted information
- unfair competition by misleading an economic entity
- unfair competition by incorrect comparison of an economic entity and (or) its product with a competitor and (or) its product
- unfair competition associated with:
  - acquisition and use of the exclusive right to means of individualization of participants in civil circulation, goods;
  - the commission by an economic entity of actions to sell, exchange or otherwise introduce goods into civil circulation, if in this case there was an illegal use of an object of intellectual property
- unfair competition through the commission by an economic entity of actions that can create confusion with the activities of another economic entity or with goods introduced by a competitor into civil circulation
- unfair competition associated with the illegal receipt, use, disclosure of information constituting a commercial, official, other secret protected by law

A person exercising unfair competition shall be obliged to *stop unlawful actions and publish a refutation of the disseminated information* and actions constituting the content of unfair competition.

A person who has suffered from unfair competition has the right to *demand compensation* from the unfair competitor for the damages caused.

According to *Paris Convention for the Protection of Industrial Property (1883)* the countries of the union are bound to assure to nationals of such countries effective protection against unfair competition.

Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

The following in particular shall be prohibited:

- all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor
- false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor
- indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

The countries of the union undertake to assure to nationals of the other countries of the union appropriate *legal remedies* effectively to repress all the acts of unfair competition.

They undertake, further, to provide measures to permit federations and associations representing interested industrialists, producers, or merchants, provided that the existence of such federations and associations is not contrary to the laws of their countries, *to take action in the courts or before the administrative authorities, with a view to the repression of the acts referred to unfair competition*, in so far as the law of the country in which protection is claimed allows such action by federations and associations of that country.

UNIT 7. INTELLECTUAL PROPERTY LITIGATION. ARBITRATION AND MEDIATION OF INTELLECTUAL PROPERTY DISPUTES

Intellectual property disputes can be considered by courts.

WIPO offers alternative ways to resolve disputes in the field of intellectual property: *arbitration, mediation, expert determination*. The link for more details: Alternative Dispute Resolution (wipo.int).

Authors or other copyright holders, based on the content of the violated right and the nature of the offense, have the right to demand:

- recognition of the right
- restoration of the situation that existed before the violation of the right
- suppression of actions that violate the right or create a threat of its violation
- indemnification or payment of compensation in the amount of ten to fifty thousand base units determined by the court
- compensation for non-pecuniary damage
- seizure of material objects with the help of which the exclusive right is violated, and material objects created as a result of such violation
- obligatory publication of the committed violation with the inclusion of information about who owns the violated right.

In the Republic of Belarus cases on disputes arising from the application of copyright and related rights legislation are under the jurisdiction of the *Judicial Collegium for Intellectual Property Affairs of the Supreme Court of the Republic of Belarus.*

The list of disputes considered by the Judicial Collegium includes *disputes in the field of industrial property*:

- complaints against decisions of the Board of Appeal under the Patent Authority
- lawsuits to establish authorship of an object of industrial property
- on the exclusion of a person from the list of authors of an industrial property object

- on the establishment of a patent owner and the recognition of an invention, utility model as official
- on the recognition of illegal early termination of the patent, the restoration of its validity and the establishment of the patent owner
- on early termination of the trademark registration
- on refusal to recognize the proposal as rationalization and cancellation of the rationalization proposal
- on collection of royalties
- on the collection of remuneration for the use of the rationalization proposal
- on the recovery of remuneration under a license agreement
- on termination of the license agreement
- on invalidation of the unilateral termination of the license agreement
- on recognition of an agreement on the use of an object of industrial property as invalid
- on the termination of the violation of the exclusive right and the recovery of losses caused by the illegal use of an industrial property object
- on the imposition of a fine in connection with the illegal use of a trademark
- on compensation for losses and compensation for moral damage
- on the suppression of violations of the rights to trade names and trademarks on the Internet, including in a domain name, etc.

The Collegium shall consider complaints against decisions of the Board of Appeal under the Patent Authority on recognition or refusal to recognize a trademark as well-known in the territory of the Republic of Belarus; as well as complaints against decisions of the Department of Pricing Policy of the Ministry of Economy of the Republic of Belarus on recognizing actions for the registration of trademarks and service marks as acts of unfair competition.

The list of disputes considered by the Judicial Collegium includes *disputes in the field of copyright and related rights:*

- claims for recognition of authorship

- about contesting authorship
- on exclusion from the list of authors
- on termination of infringement of copyright and related rights
- on the recovery of compensation in connection with copyright infringement
- on collection of royalties
- on recovery of damages
- on the recovery of income received as a result of copyright infringement, etc.

In case of *violation of the exclusive right to an object of copyright or related rights*, the author or other right holder has the right to demand, at his choice, from the infringer, instead of *compensation for losses, payment of compensation* in the amount of ten to fifty thousand basic units, determined by the court, taking into account the nature of the violation.

Compensation is subject to recovery in case of proof of the fact of infringement of the exclusive right to the object of copyright or related rights. In this case, the author or other right holder is exempted from proving the amount of damages caused by this violation.

he organization for the collective management of property rights has the right, on behalf of authors or other right holders or on its own behalf, to make claims in court, as well as to take other legal actions necessary to protect the rights, which it manages on the basis of agreements concluded with authors or other right holders, and (or) agreements concluded with other organizations for the collective management of property rights, on mutual representation of interests.

The court has the right to make a decision on the *confiscation* of any materials and any equipment, including any devices used for illegal reproduction and (or) communication to the public of works, recorded performances, phonograms, broadcasts of broadcasting or cable broadcasting organizations.

Counterfeit copies of a work, recorded performance, phonogram, transmission of an on-air or cable broadcasting organization confiscated by a court decision shall be destroyed at the expense of the violator.

UNIT 8. ENFORCEMENT OF INDUSTRIAL PROPERTY RIGHTS, COPYRIGHT AND RELATED RIGHTS

8.1. Enforcement of copyright or related rights

The following are not allowed and are recognized as *infringements* of copyright or related rights:

- any actions (including the manufacture, import into the territory of the state for the purpose of distribution or distribution (sale, rental) of devices or the provision of services) that, without the permission of the author or other copyright holder, make it possible to bypass or contribute to bypassing any technical means intended to protect copyright or related the rights
- elimination or modification without the permission of the author or other copyright holder of any electronic information on the management of rights
- distribution, import into the territory of the state for the purpose of distribution, broadcasting, communication for general information without the permission of the author or other rightholder of works, recorded performances, phonograms, broadcasts of on-air or cable broadcasting organizations, in respect of which, without the permission of the author or other rightholder, was eliminated or the electronic rights management information has been changed.

In the event of a violation of the exclusive right to an object of copyright or related rights, along with the use of methods of protection of exclusive rights, the rightholder has the right to demand, at his choice, from the violator, instead of compensation for losses, *compensation* in the amount of one basic amount to fifty thousand base values, determined by the court taking into account the nature of the violation.

Compensation is subject to recovery in case of proof of the fact of violation of the exclusive right to an object of copyright or related rights. In this case, the copyright holder is exempted from proving the amount of losses caused by this violation.

A claim for compensation cannot be made against telecommunication operators and telecommunication service providers in connection with their communication to

the public of TV programs included in the mandatory public TV package, provided that the following conditions are met:

- communication for the general knowledge of TV programs is mandatory in accordance with the requirements of legislative acts
- TV programs are broadcast to the public without changing their form and content.

An organization for the collective management of property rights has the right, on behalf of authors, performers or other rightholders, or on its own behalf, to present the requirements provided for by this article in court, as well as to perform other legal actions necessary to protect the rights that it manages on the basis of contracts concluded with authors, performers or other rightholders, and (or) agreements concluded with other organizations for the collective management of property rights, on mutual representation of interests.

Copies of a work, a recorded performance, a phonogram, a broadcast of an on-air or cable broadcasting organization, the reproduction, distribution or other use of which entails a violation of copyright or related rights are *counterfeit.*

Copies of works, recorded performances, phonograms, programs of on-air or cable broadcasting organizations protected in the state in accordance with law, which are imported into the territory of the state without the consent of authors or other rightholders into the state, are also counterfeit.

Any copies of a work, recorded performance, phonogram, broadcast of an on-air or cable broadcasting organization, from which, without the permission of the author or other rightholder, the information on the management of rights has been removed or on which the right.

Counterfeit copies of works, recorded performances, phonograms, programs of broadcasting or cable broadcasting organizations are subject to seizure by the decision of the court considering cases on the protection of copyright or related rights.

Counterfeit copies of works, recorded performances, phonograms, programs of broadcasting or cable broadcasting organizations seized by a court decision shall be

destroyed, unless otherwise provided by legislative acts. These measures are taken at the expense of the guilty person.

The court has the right to make a decision on the seizure of any materials and any equipment, including any devices used for illegal reproduction and (or) communication to the public of works, recorded performances, phonograms, broadcasts of broadcasting or cable broadcasting organizations.

8.2. Enforcement of patent rights

The patent owner must use the rights granted by the patent without prejudice to the rights of other persons, the interests of society and the state.

At the request of the patent owner, the *violation of his exclusive right must be stopped*, and the person guilty of the violation must *compensate* the patent owner for the losses caused in accordance with the law.

The violation of the exclusive right of the patent owner is recognized as carried out without his consent:

• manufacture, use, import, offer for sale, sale, other introduction into civil circulation or storage for these purposes of a product, product manufactured using a patented invention, utility model, industrial design, as well as the performance of these actions in relation to the means, during operation or operation of which, in accordance with its purpose, the method protected by a patent is carried out

• application of a method protected by a patent for an invention, or introduction into civil circulation or storage for these purposes of a product manufactured directly by a method protected by a patent for an invention.

Violation of the exclusive rights of the patent owner entails liability in accordance with the law.

In order to ensure the property rights of authors or other rightholders in cases where their practical implementation on an individual basis is difficult, as well as in cases where this law provides for the payment of remuneration for the use of works or objects of related rights, carried out without the consent of the authors or other

rightholders, *organizations for the collective management of property rights* may be created.

Organizations for the collective management of property rights may act in the form of:

non-profit organizations based on the membership of authors or other rightholders;

institutions, the property of which is in state ownership.

The activity of managing the property rights of authors or other rightholders on a collective basis is not entrepreneurial.

State accreditation of an organization for the collective management of property rights (hereinafter - state accreditation) is a procedure confirming the compliance of a legal entity with the requirements for organizations for the collective management of property rights, as well as determining the ability of this legal entity to carry out activities in certain areas of collective management of property rights authors or other copyright holders.

An organization for the collective management of property rights may receive state accreditation to carry out activities in the following areas of collective management:

management of exclusive rights to dramatic and musical-dramatic works, other script works during their public performance;

management of exclusive rights to musical works with and without text during their public performance;

management of exclusive rights to works when they are broadcast or transmitted by cable;

management of exclusive rights to works when they are communicated to the public, except for broadcast and cable broadcasting;

management of exclusive rights to performances and phonograms during their public performance;

management of exclusive rights to performances and phonograms when they are broadcast or transmitted by cable;

management of exclusive rights to performances and phonograms when communicating performances and phonograms to the public, except for on-air and cable broadcasting;

management of the right of succession in relation to originals of works of art, originals of manuscripts of works of writers, composers and scientists;

collection of remuneration for the reproduction for personal purposes of audiovisual works, works and performances embodied in phonograms, phonograms in the interests of persons who have exclusive rights to such works, performances, phonograms (authors, performers, producers of phonograms or other rightholders);

collection of remuneration for public performance, broadcasting or transmission by cable, as well as other communication to the public of phonograms published for commercial purposes, in the interests of performers and producers of phonograms;

management of exclusive rights in relation to works and objects of related rights in other cases in which the exercise of rights on an individual basis is difficult.

The main conditions for state accreditation are:

the definition in the charter of the organization for the collective management of property rights of the categories of authors or other rightholders and the areas in which it involves the implementation of collective management of property rights;

membership in an organization for the collective management of property rights of at least 50 authors or other rightholders, whose works and (or) objects of related rights belong to the sphere of activity of this organization. This condition does not apply to organizations for the collective management of property rights, created in the form of institutions, the property of which is in state ownership;

availability of a developed system of collection, distribution and payment of remuneration;

availability of an official website in the national segment of the global computer network (hereinafter referred to as the official website) to provide all interested parties with information about the rights transferred to the management of an organization for the collective management of property rights, including the names of works and (or) objects of related rights, the name of the author or other copyright holder.

Conducting state accreditation is carried out on the basis of an application from an interested person submitted to an authorized state body. The decision on state accreditation (on refusal of state accreditation) of the declared organization for the collective management of property rights is made by the authorized state body within one month from the date of receipt of the application.

The application of the interested person is submitted by the authorized state body to the commission for state accreditation of organizations for collective management of property rights (hereinafter referred to as the accreditation commission) for consideration and preparation of an opinion.

The Accreditation Commission is a collegial advisory body and is formed from among the officials of interested republican government bodies and representatives of public associations (creative unions).

A conclusion on the possibility of state accreditation of the declared organization for the collective management of property rights (on the possibility of refusal in state accreditation, indicating the grounds for refusal) is adopted at a meeting of the accreditation commission on the basis of the principle of openness of the procedure.

The conclusion of the accreditation commission is the basis for the adoption by the authorized state body of a decision on state accreditation (on refusal of state accreditation).

State accreditation is granted to an organization for the collective management of property rights for a period of five years with the possibility of its extension for every next five years at the request of this organization in the manner prescribed by this article.

The procedure for conducting state accreditation is determined by the Council of Ministers of the Republic of Belarus.

Grounds for refusal of state accreditation is the non-compliance of the organization for the collective management of property rights with the conditions established by paragraph 3 of this article.

Refusal of state accreditation must be motivated.

Refusal of state accreditation can be appealed in court.

The organization for the collective management of property rights performs the following *functions*:

concludes with users of works and (or) objects of related rights on the basis of powers granted under an agreement by authors or other rightholders, as well as other organizations for the collective management of property rights, including foreign ones, on his own behalf, but in the interests of authors or other rightholders on the use in a certain way of works and (or) objects of related rights;

distributes and regularly pays the collected remuneration to authors or other rightholders in respect of whose rights the collective management of property rights is carried out;

represents in court, in accordance with the law, the interests of authors or other rightholders whose rights it manages, and also performs other legal actions necessary to protect the rights of authors or other rightholders;

carries out other actions in accordance with the powers received from the authors or other rightholders.

The organization for the collective management of property rights is not entitled to use the works and (or) objects of related rights, the rights to which have been transferred to it for management on a collective basis.

The organization for the collective management of property rights shall form registers containing information about the rights transferred to it for management, including the names of works and (or) objects of related rights, the name of the author or other rightholder. The information contained in such registers is provided to all interested parties in accordance with the procedure established by the organization for the collective management of property rights, with the exception of information that, in accordance with legislation or an agreement, cannot be disclosed without the consent of the author or other rightholder.

The organization for the collective management of property rights posts on the official website information about the rights transferred to it for management, including the names of works and (or) objects of related rights, the name of the author or other rightholder.

An organization for the collective management of property rights has the right, in accordance with the terms of *agreements concluded with authors* or other rightholders, as well as agreements concluded with other organizations for the collective management of property rights, to channel up to 20 percent of the collected remuneration for social, cultural and educational purposes. These funds can be used, among other things, to support young talented authors and performers of the Republic of Belarus (providing material assistance for organizing exhibitions, participating in competitions, publishing works, purchasing and equipping workshops, internships), prominent figures in science, literature and art who are pensioners and those in need of material assistance.

The procedure for spending these funds is established by the charter of the organization for the collective management of property rights.

The authority to collectively manage property rights is transferred to an organization for the collective management of property rights directly by the author or other rightholder on the basis of an agreement concluded with her on the management of property rights to a work and (or) an object of related rights, as well as under relevant agreements with other organizations on collective management of property rights, including foreign ones.

An organization for the collective management of property rights cannot refuse an author or other rightholder to conclude an agreement on the management of property rights to a work and (or) an object of related rights, if the management of such a category of rights belongs to the sphere of activity of this organization.

When concluding an agreement on the management of property rights to a work and (or) an object of related rights, an organization for the collective management of property rights must act on equal terms with respect to authors or other rightholders who have exclusive rights to works and (or) objects of related rights of the same type (literary, musical, dramatic, etc.), used in one area of collective management of property rights.

An agreement on the management of property rights to a work and (or) an object of related rights must contain:

a list of works and (or) objects of related rights, specific forms and methods of their use, in respect of which management powers are transferred to organizations for the collective management of property rights;

the procedure for calculating and paying remuneration collected by an organization for the collective management of property rights for the use of works and (or) objects of related rights.

An agreement on the management of property rights to a work and (or) an object of related rights is concluded for an indefinite period.

The author or other rightholder may conclude an agreement on the management of property rights in relation to a specific work and (or) an object of related rights in the relevant area of collective management with only one organization for the collective management of property rights.

The distribution and payment of remuneration collected by an organization for the collective management of property rights for the use of works and (or) objects of related rights must be carried out regularly, at least once a quarter, in proportion to the actual use of the relevant works and (or) objects of related rights determined by based on information received from users, as well as other data on the use of works and (or) objects of related rights, including information of a statistical nature.

The frequency of transfer of the collected remuneration to foreign authors or other foreign rightholders is established in the agreements on representation of interests concluded with foreign organizations for the collective management of property rights, but cannot be less than once a year.

Along with the payment of remuneration, an organization for the collective management of property rights is obliged to provide authors or other rightholders with information on the volume of use of their works and (or) objects of related rights, on the amount of remuneration collected for the use of their works and (or) objects of related rights and the amount of deductions to cover their expenses for the implementation of collective management of their property rights, as well as information on funds allocated for social, cultural and educational purposes, to the fund of the President of the Republic of Belarus for the support of culture and art.

The remuneration not paid within three months from the moment of distribution is credited to the bank accounts of the organization for the collective management of property rights, where it is kept until demand by the author or other rightholder for three years from the moment it was credited to bank accounts, without the right to use the said remuneration by this organization. At the same time, information about the search for an author or other copyright holder who has not been paid a fee is posted on the official website of the organization for the collective management of property rights from the moment these funds are credited to the corresponding bank accounts.

After three years, the remuneration not paid to the author or other rightholder within three months is transferred by the organization for the collective management of property rights to the income of the republican budget.

The rules for the collection, distribution and payment of remuneration to authors or other rightholders, as well as the procedure for transferring unpaid remuneration to the income of the republican budget, are determined by the Council of Ministers of the Republic of Belarus.

An organization for the collective management of property rights shall have the right to make deductions from the amount of remuneration collected by it to cover its expenses for the implementation of collective management of property rights.

The amount of such deductions is established in an agreement on the management of property rights to a work and (or) an object of related rights, taking into account the provisions of part three of this clause.

An organization for the collective management of property rights does not have the right to withhold more than 50 percent of the amount of remuneration it has collected to cover its expenses for the implementation of collective management of property rights, referral for social, cultural and educational purposes, to the fund of the President of the Republic of Belarus for the support of culture and art.

The author or other rightholder has the right to refuse to fulfill the contract with the organization for the collective management of property rights in full or in relation to certain works and (or) objects of related rights in the relevant areas of management, notifying her in writing about this at least six months before termination (changes) of

the contract. In this case, the contract is considered terminated (changed) within the period specified in the notification, but not earlier than six months from the date of receipt of the notification by the organization for the collective management of property rights. In this case, the organization for the collective management of property rights is obliged to immediately post on its official website information on the exclusion of rights to these works and (or) objects of related rights from management,

When a decision is made on the early termination of state accreditation, as well as the expiration of its validity, the organization for the collective management of property rights is obliged to pay the author or other rightholder the remuneration due to them, collected before the decision is made to early terminate state accreditation or the expiration of its validity.

Users of works and (or) objects of related rights, property rights to which have been transferred to the management of an organization for the collective management of property rights, are obliged to use them on the basis of an agreement on the use of works and (or) objects of related rights concluded with this organization.

In cases where, in accordance with this Law, the use of works and (or) objects of related rights is allowed without the consent of the authors or other rightholders, but with the payment of remuneration to them, users are obliged to conclude an agreement on the payment of remuneration with the relevant organization for the collective management of property rights, if otherwise the procedure for payment of remuneration is not established by law.

When concluding agreements on the use of works and (or) objects of related rights, an organization for the collective management of property rights is obliged to act on equal terms with respect to users who use works and (or) objects of related rights of the same type in the same form and (or) in the same way . At the same time, the organization for the collective management of property rights does not have the right to refuse the user to conclude an agreement on the use of works and (or) objects of related rights.

An agreement on the use of works and (or) objects of related rights between the user and the organization for the collective management of property rights is concluded under the terms of a simple (non-exclusive) license and must contain:

a list of works and (or) objects of related rights that can be used by the user in accordance with the agreement, the forms and methods of their use;

the period during which the user can use the works and (or) objects of related rights;

the procedure for calculating and paying remuneration for the use of works and (or) objects of related rights. At the same time, the amount of remuneration cannot be lower than the minimum amount established by the Council of Ministers of the Republic of Belarus;

the procedure for presenting information on the use of works and (or) objects of related rights.

If it is impossible to list in the agreement all the works and (or) objects of related rights that are under the management of the organization for the collective management of property rights and are provided for use, the subject of the agreement can be determined by referring to the list of works and (or) objects of related rights, which is inalienable part of the contract. Such a list is posted by the organization for the collective management of property rights on the official website.

Users are obliged to keep accurate records of the use of works and (or) objects of related rights and provide organizations for the collective management of property rights information on their use, as well as documents related to the calculations and payment of remuneration.

The organization for the collective management of property rights is obliged to provide users, upon their request, with information confirming that it has the authority to manage the rights in relation to the works and (or) objects of related rights used by these users.

UNIT 9. STATE MANAGEMENT OF INTELLECTUAL PROPERTY. INTERNATIONAL TREATIES AND CONVENTIONS ON INTELLECTUAL PROPERTY

The state manages intellectual property through the creation of special bodies (ministries, committees) for the management of intellectual property, as well as the adoption of laws.

In the Republic of Belarus, the structural elements of the system of state management of intellectual property are, in particular, the Council of Ministers, the State Committee for Science and Technology, the National Center for Intellectual Property. Important regulations in this area are adopted by the President of the Republic of Belarus.

Basic national acts of the Republic of Belarus in the field of intellectual property are mentioned in Unit 1.

The main international acts in the field of protection of intellectual property rights are:

- Paris Convention for the Protection of Industrial Property (1883)
- Madrid Agreement Concerning the International Registration of Marks (1891)
- Patent Cooperation Treaty («PCT») (1970)
- Berne Convention for the Protection of Literary and Artistic Works (1886)
- WIPO Copyright Treaty (1996)
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)
- Convention Establishing the World Intellectual Property Organization (1967)

The provisions of the *Paris Convention for the Protection of Industrial Property (1883)* provide that, with respect to the protection of industrial property, each of the Contracting States is obliged to grant to the nationals of the other Contracting States the same scope of protection as it grants to its own nationals. The legal protection afforded by the Convention also extends to nationals of states not party to it if they have a place of residence or a real and effective industrial or commercial establishment in a Contracting State.

The Paris Convention provides for the right of priority in relation to patents. This right means that on the basis of a properly executed first application filed in one of the Contracting States within a certain period of time (12 months), the applicant may seek protection in any of the remaining Contracting States. Such subsequent applications shall be deemed to have been filed on the same date as the first application.

According to the provisions of the *Berne Convention for the Protection of Literary and Artistic Works of 1886*, interstate copyright protection is based on two fundamental principles:

• the principle of national treatment (any work created in one of the countries participating in the convention is provided with the same level of protection in other participating countries as for works created in the territory of these countries)

• the principle of automatic protection does not require the registration of a work or deposit (transfer to storage).

According to the *Universal Copyright Convention of 1952*, each of the states parties to the convention is obliged to take the necessary measures to ensure sufficient and effective protection of the rights of authors and other right holders to literary, scientific and artistic works.

According to the *Patent Cooperation Treaty of June 19, 1970*, the countries participating in it formed an international patent cooperation union to cooperate in the field of filing applications for inventions, conducting patent search and examination on them, as well as to provide special technical services. Under this agreement, filing and registration of international applications is possible.

World intellectual property organization (WIPO) plays an important role in the field of intellectual property. This is the organization of the United nations (193 members) which deals with intellectual property. Its procedures are regulated by the WIPO Convention, which established WIPO in 1967.

WIPO services include:

PCT – The International Patent System

Madrid – The International Trademark System

Hague – The International Design System

Lisbon – The International System of Geographical Indications

Budapest – The International Microorganism Deposit System.

For more information about WIPO see the link: WIPO.

SECTION 2. SEMINAR LESSON PLAN

Seminar 1.

UNIT 1. THE CONCEPT OF INTELLECTUAL PROPERTY

1.1. The concept and role of intellectual property in the socio-economic development of society

1.2. Intellectual property objects

1.3. Legislation in the field of intellectual property

Student's tasks:

– presentation of essay on the related topics.

– participation in the discussion: «The concept and role of intellectual property in the socio-economic development of society».

RECOMMENDED LAWS:

1. Paris Convention for the Protection of Industrial Property (1883)
2. Madrid Agreement Concerning the International Registration of Marks (1891)
3. Patent Cooperation Treaty («PCT») (1970)
4. Berne Convention for the Protection of Literary and Artistic Works (1886)
5. WIPO Copyright Treaty (1996)
6. Civil Code of the Republic of Belarus (1998)

Seminar 2.

UNIT 2. COPYRIGHT AND RELATED RIGHTS

2.1. Copyright

2.2. Related rights

2.3. Free use of objects of copyright and related rights

2.4. Transfer of the exclusive right

Student's tasks:

– presentation of essay on the related topics.

RECOMMENDED LAWS:

1. Berne Convention for the Protection of Literary and Artistic Works (1886)
2. WIPO Copyright Treaty (1996)
3. Civil Code of the Republic of Belarus (1998)

Seminar 3.

UNIT 3. INDUSTRIAL PROPERTY

3.1. Invention: international and national procedure of patenting

3.2. Industrial Designs

3.3. Topology of integrated circuits

3.4. Trademarks

3.5. Geographical indications

Student's tasks:

– presentation of essay on the related topics

– working in groups.

RECOMMENDED LAWS:

1. Paris Convention for the Protection of Industrial Property (1883)
2. Madrid Agreement Concerning the International Registration of Marks (1891)
3. Patent Cooperation Treaty («PCT») (1970)
4. Civil Code of the Republic of Belarus (1998)

Seminar 4.

UNIT 4. PATENT INFORMATION AND PATENT RESEARCH

Student's tasks:

– working in groups

RECOMMENDED RESOURCES:

1. WIPO: https://www.wipo.int/about-wipo/ru/
2. PCT – The International Patent System

3. Madrid – The International Trademark System

4. Hague – The International Design System

5. Lisbon – The International System of Geographical Indications

6. Budapest – The International Microorganism Deposit System

7. National Center for Intellectual Property: https://ncip.by/

8. Federal Service for Intellectual Property (Russian Federation): https://rospatent.gov.ru/en/about

Seminar 5.

UNIT 5. INTRODUCTION OF INTELLECTUAL PROPERTY OBJECTS INTO CIVIL CIRCULATION. COMMERCIAL USE OF INTELLECTUAL PROPERTY

Student's tasks:

– presentation of essay on the related topics

– working in groups.

RECOMMENDED LAWS:

1. Paris Convention for the Protection of Industrial Property (1883)

2. Madrid Agreement Concerning the International Registration of Marks (1891)

3. Patent Cooperation Treaty («PCT») (1970)

4. Civil Code of the Republic of Belarus (1998)

Seminar 6.

UNIT 6. PROTECTION AGAINST UNFAIR COMPETITION

Student's tasks:

– presentation of essay on the related topics

– working in groups.

RECOMMENDED LAWS:

1. Paris Convention for the Protection of Industrial Property (1883)

2. Civil Code of the Republic of Belarus (1998)

Seminar 7.

UNIT 7. INTELLECTUAL PROPERTY LITIGATION. ARBITRATION AND MEDIATION OF INTELLECTUAL PROPERTY DISPUTES

Student's tasks:

– presentation of essay on the related topics

– working in groups.

RECOMMENDED RESOURCES:

1. Paris Convention for the Protection of Industrial Property (1883)
2. Civil Code of the Republic of Belarus (1998)
3. Alternative Dispute Resolution (wipo.int).

Seminar 8.

UNIT 8. ENFORCEMENT OF INDUSTRIAL PROPERTY RIGHTS, COPYRIGHT AND RELATED RIGHTS.

UNIT 9. STATE MANAGEMENT OF INTELLECTUAL PROPERTY. INTERNATIONAL TREATIES AND CONVENTIONS ON INTELLECTUAL PROPERTY

8.1. Enforcement of copyright or related rights

8.2. Enforcement of patent rights

Student's tasks:

– presentation of essay on the related topics.

– participation in the discussion: «State management of intellectual property ».

RECOMMENDED RESOURCES:

1. WIPO: https://www.wipo.int/about-wipo/ru/
2. National Center for Intellectual Property: https://ncip.by/
3. Federal Service for Intellectual Property (Russian Federation): https://rospatent.gov.ru/en/about
4. Paris Convention for the Protection of Industrial Property (1883)
5. Civil Code of the Republic of Belarus (1998)

SECTION 3. KNOWLEDGE CONTROL MATERIAL

Test 1.

Task 1.

What are the conditions for patentability (legal protection) of an invention:

1) Industrial applicability

2) Originality

3) Novelty

4) Inventive step

Task 2.

What are the conditions for patentability (legal protection) of an industrial design:

1) Novelty

2) Industrial applicability

3) Inventive step

4) Originality

Task 3.

Specify the validity period of the trademark certificate:

1) 5 years

2) 10 years (with the right to renew each time for another 10 years)

3) 20 years

4) 25 years

Task 4.

Specify civil law ways to protect rights to intellectual property objects:

1)…

2)…

3)…

4)…

5)…

Task 5.

Specify the main international acts in the field of protection of rights to intellectual property

1)…

2)…

3)…

4)…

Task 6.

The license agreement is:

1) granting another person the right to use the OIP

2) granting to another person all rights to intellectual property

3) alienation of the exclusive right

Task 7.

The patent certifies:

1) ownership of the intellectual property

2) OIP priority

3) authorship of a person

4) exclusive right to use intellectual property

5) personal non-property copyrights

Task 8.

A non-exclusive (simple) license grants the licensee:

1) the right to use the intellectual property subject to retention by the licensor the right to issue licenses to others

2) the right to use the intellectual property without retention by the licensor the right to issue licenses to others

3) all exclusive rights

Task 9.

The exclusive license agreement grants the licensee:

1) the right to use the intellectual property subject to retention by the licensor the right to issue licenses to others

2) the right to use the intellectual property without retention by the licensor the right to issue licenses to others

3) all exclusive rights

Task 10.

A sublicense agreement is an agreement concluded between a sublicensee and:

1) the licensor

2) the licensee

3) the patent holder

Task 11. Know-how is:

1) technical and other information necessary for the production any product or process, and having a certain commercial value, to which there is no legal access by third parties

2) well-known technical information

3) a patented invention

Task 12. Form of concluding a license agreement:

1) oral

2) electronic form

3) writing

4) writing and registration

Task 13. What are royalties:

1) periodic interest payments

2) one-time payment

3) one-time payment + periodic interest payments.

Task 14. What is a lump sum payment?

1) one-time payment + periodic interest payments

2) one-time or staged payments

3) periodic interest payments

Task 15. The court that considers disputes in the field of intellectual property in the Republic of Belarus:

1) district general court

2) regional general court

3) Constitutional Court of the Republic of Belarus

4) Supreme Court of the Republic of Belarus

Task 16. Plagiarism is:

1) illegal transfer of authorship to another person

2) attribution of authorship

Task 17. For plagiarism comes:

1) administrative liability

2) criminal liability

3) civil liability

Task 18. The following can be contributed to the statutory fund:

1) any property rights

2) property rights having an assessment of their value.

Task 19. Define a franchise agreement.

Task 20. The parties to a franchise agreement may be:

1) only legal entities

2) only citizens

3) 1) and 2)

4) onyl legal entities and individual entrepreneurs

Task 21. The composition of the licensed complex under the franchise agreement must include:

1) the right to use the trade name of the copyright holder

2) the right to use the protected room. information

3) the right to use a trademark

4) the right to use a geographical indication

Task 22. Under an agreement on the assignment of rights to intellectual property:

1) the right holder alienates the exclusive right to the intellectual property to the other party for the entire duration of these rights

2) the right holder grants the other party the right to use the intellectual property for a certain period.

Test 2.

1. Fill the table bellow.

intellectual property objects		
copyright objects	related rights objects	industrial property objects

2. Write basic national legislation to every group of intellectual property objects.

_____
_____
_____
_____

3. Write basic international acts in the field of intellectual property.

_____
_____
_____
_____

Topics for essays.

1. The Concept of Intellectual Property. Fields of Intellectual Property Protection.

2. The World Intellectual Property Organization (WIPO).

3. Copyright and Related Rights.

4. Trademarks.

5. Industrial Designs and Integrated Circuits.

6. Protection of Geographical Indications on the International Level through Multilateral Treaties. Protection of Geographical Indications on the International Level through the Provisions of Bilateral Agreements.

7. Protection against Unfair Competition.

8. Enforcement of Industrial Property Rights, Copyright and Related Rights.

9. Activities within WIPO Concerning Enforcement. Enforcement Provisions of the TRIPS Agreement.

10. Intellectual Property Litigation. Arbitration and Mediation of Intellectual Property Disputes.

11. Alternative Dispute Resolution. Enforcement in the International Context WIPO Arbitration and Mediation Center.

12. The Paris Convention for the Protection of Industrial Property.

13. The Berne Convention for the Protection of Literary and Artistic Works.

14. The Patent Cooperation Treaty (PCT).

15. The Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

16. The Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to the Madrid Agreement.

17. The Hague Agreement Concerning the International Deposit of Industrial Designs. The Trademark Law Treaty (TLT).

18. The Patent Law Treaty (PLT).

Questions for credit

1. The Concept of Intellectual Property. Fields of Intellectual Property Protection.

2. Patents. Conditions of Patentability.

3. Drafting and Filing a Patent Application. Examination of a Patent Application. Exploitation of the Patented Invention.

4. Licenses.

5. Copyright Protection. Subject Matter of Copyright Protection.

6. Rights Comprised in Copyright. Related Rights.

7. Ownership of Copyright Limitations on Copyright Protection.

8. Piracy and Infringement. Remedies.

9. Trademarks. Definitions. Signs Which May Serve as Trademarks. Criteria of Protectability.

10. Protection of Trademark Rights.

11. Trademark Registration.

12. Trademark Piracy, Counterfeiting and Imitation of Labels and Packaging. Change of Ownership. 13. Trademark Licensing. Trade Names. Franchising.

14. Industrial Designs.

15. Integrated Circuits.

16. Geographical Indications.

17. Protection of Geographical Indications on the National and International Level.

18. Protection against Unfair Competition. The Need for Protection. The Legal Basis for Protection. The Acts of Unfair Competition.

19. Enforcement of Industrial Property Rights in General. Enforcement of Patent Rights. Enforcement of Copyright and Related Rights.

20. Activities within WIPO Concerning Enforcement.

21. Enforcement Provisions of the TRIPS Agreement.

22. Intellectual Property Litigation. Arbitration and Mediation of Intellectual Property Disputes.

23. Review of Industrial Property Office Decisions. Infringement Actions. Remedies.

24. Alternative Dispute Resolution. Enforcement in the International Context WIPO Arbitration and Mediation Center.

25. International Treaties and Conventions on Intellectual Property: The Paris Convention for the Protection of Industrial Property. The Berne Convention for the Protection of Literary and Artistic Works. The WIPO Copyright Treaty (WCT). The Patent Cooperation Treaty (PCT). The Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. The Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to the Madrid Agreement. The Hague Agreement Concerning the International Deposit of Industrial Designs. The Trademark Law Treaty (TLT). The Patent Law Treaty (PLT).

SECTION 4. LEARNING RESOURCES

1. Legislation.

1.1 International Conventions:

1. Paris Convention for the Protection of Industrial Property (1883)
2. Madrid Agreement Concerning the International Registration of Marks (1891)
3. Patent Cooperation Treaty («PCT») (1970)
4. Berne Convention for the Protection of Literary and Artistic Works (1886)
5. WIPO Copyright Treaty (1996)
6. International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)

1.2. National legislation of the Republic of Belarus:

1. Constitution of the Republic of Belarus (1994).
2. Civil Code of the Republic of Belarus (1998).
3. Law of the Republic of Belarus «On Patents for Inventions, Utility Models, Industrial Designs» (2002).
4. Law of the Republic of Belarus «On Trademarks» (1993).
5. Law of the Republic of Belarus «On the legal protection of topologies of integrated circuits» (1998).
6. Law of the Republic of Belarus «On countering monopolistic activities and developing competition» (2013).
7. Law of the Republic of Belarus «On Geographical Indications» (2002).

2. Literature

2.1. Basic literature

1. European intellectual property law / Terence Prime. - Reissued ed., Burlington, Dartmouth Publishing, 2000. - New York: London: Routledge, 2018. - VII, 328 p.

2. Hague yearly review, 2020: international registrations of industrial designs. - Geneva: WIPO, 2020. - 72 p.

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