

METHOD - AS AN OBJECT OF THE INVENTION

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ABSTRACT	KEYWORDS
<p>In the context of work on the draft of a new edition of the Civil Code of the Republic of Uzbekistan, the relevance and scientific novelty of the legal regulation of the method as an object of invention are determined. The role and significance of the method of invention is argued. The method is considered as an object of invention, which may give rise to certain exclusive rights. Various grounds for recognition and legal protection of the method of invention are analyzed. Considered are not only the essence of the method of invention, but also the features of the method of invention for patentability. The conclusion is formulated about the definition of the invention method, the process of performing interrelated actions on a material object using material means. And also, to characterize the methods, such signs as the presence of an action or a set of actions are used; the order in which such actions are performed in time (successively, simultaneously, in various combinations, etc.). Proposals are formulated regarding the method as an object of invention, on the improvement of civil legislation in the field of intellectual property.</p>	<p>method of invention, invention, protectability, object of intellectual property rights, exclusive rights, patentability, features of the method of invention.</p>

Introduction

Today, intellectual property objects, which are important for technical and technological development, are of no small importance. Although not everyone wants to protect the created new technologies as an object of intellectual property rights, there are certain legal bases and legal mechanisms that should be improved taking into account the development of society.

The discovery in 1620 in the Netherlands of methods for grinding glass to make lenses played a decisive role in technological development. At that time, a whole industry was born, not only of making microscopes for doctors and telescopes for astronomers (and astrologers), but mainly of making spectacles to help – in some cases enable – Dutch citizens to read the books produced by the printing house¹.

¹ Robert U. Ayres The History and Future of Technology. Can Technology Save Humanity from Extinction? <https://link.springer.com/book/10.1007/978-3-030-71393-5>. 107-c.

In the Australian Patent Law, the concept of "invention" means "any method of new production that is the subject of a patent. In the case of Pfizer Inc. v The Commissioner of Patents (2004)" a court in New Zealand ruled a treatment unpatentable under the Statute of 1623. The treatments were held to be an invention that was excluded from patentability under s. 6 of the 1623 Statute. The Court also noted that the provisions of the 1623 Statute were not overridden by New Zealand's obligations under the TRIPS Agreement. The Court clarified the scope of the Commissioner's right to dismiss an application on the grounds that it is generally inconvenient and held that treatments fell within that scope.².

II. RESEARCH METHODOLOGY

The study used the general scientific method of cognition, a number of private scientific methods of research, such as logical, systemic, comparative law.

III. LITERATURE REVIEW

The material presented in the educational literature is of a general nature. This topic is covered in the works of domestic scientists, such as Karakhodzhaeva D.M. [4-14], Burkhanova L.M. [1- 3, 14-42], Sharakhmetova U.Sh. [43-50], Egamberdiev E.Kh. [51-65], Yeschanova D.A. [66-69], Mekhmonov K. [70-84] and others.

According to Article 6 of the Law of the Republic of Uzbekistan "On Inventions, Utility Models and Industrial Designs", a technical solution in any field related to a product (in particular, a device, substance, microorganism strain, plant or animal cell culture) is recognized (protected) as an invention or method (the process of performing actions on a material object with the help of material means). Also, one should pay attention to the important aspect that, as an invention, a technical solution is protected, including the use of a product or method for a specific purpose.

For an invention related to a method, the examples indicate the sequence of actions (techniques, operations) on a material object, as well as the conditions for carrying out actions, specific modes (temperature, pressure, etc.), devices, substances and strains used in this case, if it's necessary. If the method is characterized by the use of means (devices, substances and strains) known before the priority date of the invention, it is sufficient to disclose these means in such a way that the invention can be carried out. When using unknown means, give their characteristics and, if necessary, attach a graphic image.

Methods as objects of inventions include the processes of performing actions on a material object with the help of material means.

The legislator distinguishes between two main types of objects, which may include protectable technical solutions: a product (in particular, devices, substances, strains of microorganisms, plant or animal cell cultures) and a method (the process of performing actions on a material object using material means).

Scientists conducted a study according to which, more than 200,000 patents in search of solutions and analysis of methods for their creation. Of these, only 40,000 had inventive solutions. Otherwise, there were minor improvements. The scientist defined an inventive problem as a problem in which a

² <https://www.piperpat.com/page/listing/pfizer-inc-v-commissioner-of-patents-ca-22-03-28th-june-2004/important-nz-cases#.ZBFtv3ZByUk>

change in one parameter contradicts another parameter (or other parameters) of a product or process and called this conflict a systemic contradiction.³.

As the number of design applications around the world is growing rapidly, many are concerned that the current Locarno Classification system is insufficient to support prior art search and data management. For this reason, many patent offices are willing to establish advanced design patent classification systems instead of ad hoc methods for entering dual country classifications.⁴.

At the same time, the subject of the invention may be a method for obtaining an artificial product that is identical to a natural analogue (technology for the production of table salt or artificial diamonds). A patent on a method of producing such a product will extend to the product itself ("indirect protection of a product through a method")⁵.

Cannot be considered inventive solutions achieved solely through the physical or intellectual efforts of a person (method of training, rule of the game, teaching method), organizational and managerial decisions, including those in the field of entrepreneurial activity (methods of planning, financing, marketing, etc.).

IV. DISCUSSION AND ANALYSIS

If you pay attention to the legislation of Ukraine, the legal regulation of the process of acquiring and exercising rights to an invention and utility model is carried out on the basis of a number of laws and regulations, incl. of the Civil Code of Ukraine, the Law of Ukraine "On the Protection of Rights to Inventions and Utility Models" dated December 15, 1993 (the Law), as well as international legal treaties, incl. the Paris Convention for the Protection of Industrial Property of March 20, 1883, the Patent Law Treaty of June 1, 2000 (Geneva), the Agreement on Trade Aspects of Intellectual Property Rights, etc. The Civil Code of Ukraine indicates only the general principles of legal regulation⁶.

In China, Article 69 of the Patent Law provides that the following shall not be considered patent infringement: "(1) after a patented product or a product directly obtained using a patented method is sold by the patent owner or sold by any unit or individual with the permission the patentee, any other person uses, offers to sell, sells or imports this product"⁷.

With regard to business methods, applications relating to business models that include a technical function in addition to business rules or methods will comply with the patent requirements under the new guidelines. As with software inventions, the new rules don't open the door wide open for all kinds of business methods, but they do open up a window of opportunity for a business method patent in China. According to ZY Partners analysis, it should become more common for any examiner

³ Isak Bukhman. Technology for Innovation How to Create New Systems, Develop Existing Systems and Solve Related Problems. Shanghai Jiao Tong University Press and Isak Bukhman 2021. Springer. <https://link.springer.com/book/10.1007/978-981-16-1041-7>. 3-с.

⁴ Jieun Kim, Buyong Jeong, Daejung Kim. Patent Analytics Transforming IP Strategy into Intelligence. //Springer. Singapore, January 2021. <https://doi.org/10.1007/978-981-16-2930-3>. <https://link.springer.com/book/10.1007/978-981-16-2930-3>. 33-с.

⁵ Гражданское право: учебник в 4 т. /отв. ред. Е. А. Суханов. -2-е изд., перераб. и доп. - Москва: Статут, 2019. 320-б.

⁶ <https://pravo.ua/articles/obektom-izobretenija-mozhet-byt-produkt-ili-process-v-ljuboj-sfere-tehnologii/>

⁷ Patent Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 27, 2008, effective Oct. 1, 2009) CN028 (China). See also Yu (2004), pp. 25–38.

rejection of business method patent applications to focus on lack of novelty or inventive step relative to prior art, rather than outright rejection of the subject matter as ineligible for patent protection.⁸.

For the purposes of patent protection, a method is understood as a sequence of interrelated operations on material objects using material means. The fundamental difference between a method and a product is that a method is always a process that takes place in the time interval allotted for it, which is sometimes called the "cycle" of the method.

Many patents have been issued for software related to business methods. For example, in the famous *State Street Bank v. Signature* has been recognized as patentable "data processing system for the configuration of financial services with a central and central branches" (for example, mutual fund pooling). regarding Amazon's online payment system was also found patentable in *Amazon v. Barnesandnoble*⁹.

Alice v. CLS Bank was concerned with patents for a computer-implemented "settlement risk" mitigation scheme using a third-party intermediary. The patents were assigned to Alice and their validity and applicability were challenged by the bank. In response, Alice filed a claim for infringement of rights. There were several claims in the patents, including: (1) a method for exchanging financial obligations; (2) a system for carrying out the method; (3) a computer-readable medium containing program code for executing the method. The central question was whether these objects were patentable¹⁰.

The patent claims are by far the most important part of the description of a patent and determine the legal scope of patent protection. For example, in the claims, the term "battery" is replaced with "power source" for electronic circuits to provide broader protection. On the other hand, too little detail about the elements may cause the prior art to be invalidated (e.g. remote control method vs. remote control method and system based on electromagnetic induction)¹¹. The claimed method, which simply required a general computer implementation, failed to turn an abstract idea into a patentable invention. The computer components of the patent method did not add anything that would not have been there when the steps were considered separately. The assignee's claims for a computer system and a computer-readable medium were dismissed on essentially the same grounds.

Vicom has made demands regarding the digital imaging method and associated devices. The Board of Appeal of the European Patent Office ("EPO") held that "[a] application relating to a technical process which is carried out under the control of a program (whether by means of hardware or software) cannot be considered as relating to a computer program as such "and" a claim that can be considered as relating to a computer configured to operate in accordance with a specific program (whether by means of hardware or software) to control or perform a technical process cannot be considered as relating to a computer program as such"¹².

⁸ <https://ipwatchdog.com/2017/03/03/china-relaxing-barriers-software-business-method-patents/id%3d79017/>

⁹ *Amazon.com v. Barnesandnoble.com*, 239 F.3d 1243 (2001).

¹⁰ *Alice Corp. v. CLS Bank International*. <https://www.lexisnexis.com/community/casebrief/p/casebrief-alice-corp-pty-ltd-v-clb-bank-int-l>

¹¹ Jieun Kim, Buyong Jeong, Daejung Kim. *Patent Analytics Transforming IP Strategy into Intelligence*. //Springer. Singapore, January 2021. <https://doi.org/10.1007/978-981-16-2930-3>. <https://link.springer.com/book/10.1007/978-981-16-2930-3>. 41-c.

¹² Yahong Li. The Current Dilemma and Future of Software Patenting. // *International Review of Intellectual Property and Competition Law* **volume 50**, pages 823–859 (2019). <https://link.springer.com/article/10.1007/s40319-019-00841-w>

“Abstract ideas that make an object unpatentable are thoughts of the mind that have no practical application to any physical objects or real actions and any technical results, including, but not limited to mathematical concepts, ways of organizing human activity and mental processes.”

The main difference between the mathematical method and the technical process can be seen in the fact that the mathematical method is carried out on numbers and gives a result also in numerical form, and the mathematical method is only an abstract concept that prescribes how to act on numbers. and not giving a direct technical result as such. In contrast, if a technical process uses a mathematical method (in this case, an optimization function) (in this case, assigning a server from a set of servers to process a client request), this process is performed on a physical object using some technical means that implements the method and provides as a result of a certain change of this object.

In practical life, methods are understood as various technological processes, and therefore an integral part of each method is the presence of a process, technology in it. Without this technology, a patentable method simply does not exist. An indication of the process, technology makes it possible to distinguish a method from another type of invention - a device.

In each method, there is necessarily an object on which certain actions are performed in the technological process. In addition, any method presupposes the presence of material means by which these specific actions are performed in the technological process.

Thus, the presence in the technological process of an object on which actions are performed, and the means by which these actions are carried out, constitute the mandatory attributes of the method. In practice, there are three groups of patentable methods:

1) technological processes aimed at material objects (raw materials, materials, intermediate products, production products, etc.) with the aim of their useful transformation by processing and processing raw materials and semi-finished products into finished products and products, i.e. aimed at the manufacture of products; 2) methods aimed at changing the state of objects of the material world without obtaining specific products (management, regulation, transportation, etc.); 3) methods for determining the state of objects of the material world (control, measurement, diagnostics, etc.)¹³.

Patentable methods are the second largest group of inventions after devices. Obtaining a patent for a method has advantages over obtaining a patent for a device. This is due to the fact that a patent for a method protects a greater amount of rights, since the scope of the invention can be expressed more broadly by the features of the method. And despite this, when applying for a patent, applicants prefer to apply for a device.

If you pay attention to the statistics, in 2019, 272 applications were received for utility model objects in the Republic of Uzbekistan, and 341 in 2020. In 2019, 216 applications for state examination and 217 applications for substantive examination were received. In 2019, 181 national applications, 197 international applications were registered, and in 2020 107 national applications, 2 international applications¹⁴. In practice, the number of methods registered with the Department of Intellectual Property under the Ministry of Justice of the Republic of Uzbekistan is much less than devices, although it is not explicitly indicated in the statistics.

¹³ Цилюрик У.С. Патентование способа как объекта изобретения: вопросы теории, правоприменительной практики и совершенствования законодательства. // "Журнал Суда по интеллектуальным правам", № 2 (36), июнь 2022 г., с. 71-82.

¹⁴ <https://my.ima.uz>

In 2021, the number of registered inventions increased by 7.2% compared to last year and amounted to 298 inventions. The share of national applicants is 67.79%, the share of foreign applicants is 32.21%.

Dynamics of filing applications for inventions by years ¹⁵

Index	2017	2018	2019	2020	2021	Total
Applications submitted, total of them:	553	650	543	588	665	2999
national applicants	357	470	374	356	413	1970
foreign applicants	196	180	169	232	252	1029
including under the PCT procedure	185	157	153	203	225	923

We think that the reason lies in the possibility of more effective control over the fact of using the invention - the device, than the methods. Indeed, the fact of illegal use by third parties of the device can be controlled both in the field of production in the manufacture of devices, and in the field of its application, including sale. The fact of using the method can be controlled only in the area of its use, which is not always possible to determine.

Of the three groups of methods listed above, the methods of the first group are more often protected. The legal protection of such inventions has a specific feature. It lies in the fact that, in accordance with paragraph 10 of the Law, the effect of a patent issued for such a method also applies to a product directly obtained by this method. Thanks to this feature, the ability to control the use of the patented method by third parties is expanded.

Methods belonging to the second and third groups are much less common due to the difficulty of establishing the fact of their illegal use.

Among foreign applicants, the most active applicants were from the following countries: Russia (53), USA (51), Germany (27), China (16); in general, these countries account for 58.74% of applications submitted by foreign applicants. In total, in the reporting year, foreign applicants filed applications for inventions from 32 countries, in 2020 - from 28 countries.

Number of valid patents of the Republic of Uzbekistan for inventions as of December 31, 2021y.¹⁶

Valid as of December 31, 2020	1159
Inventions registered in 2021	298
Ceased in 2021	189
Reactivated in 2021	51
Valid of 12/31/2021	1217

¹⁵ https://my.ima.uz/uploads/files/yillik_hisobot_2021.pdf 17-c.

¹⁶ https://my.ima.uz/uploads/files/yillik_hisobot_2021.pdf 20-c.

The distribution of applications received by headings of the International Patent Classification (IPC) remains unchanged - the trend of patenting activity by applicants in two sections of the IPC remains: A - "Satisfying the vital needs of a person" - 34.5% of applications and C - "Chemistry and metallurgy" - 26.2 % of applications (see diagram 3.1.1). Moreover, if national applicants prefer the section related to meeting the vital needs of a person - 39.5% of the total number of applications filed by national applicants, then foreign applicants - section C "Chemistry and Metallurgy" - 37% of the total number of applications received from foreign applicants.

In Germany, in order to protect the interests of the growing German chemical industry, there is the following rule: "If a patent is issued for a method, then its effect also applies to products manufactured by this method"¹⁷.

Features characterizing the method. Any object of the invention is characterized by features that can characterize the method as the object of the invention. These features include: 1. The presence of an action or a set of actions. The presence of actions is understood as technological operations and techniques that determine the main stages of the process. The presence of operations and techniques gives a general idea of all the cycles of the method from the beginning of its implementation to the end. If there are no actions in the description of the method, such a method cannot be implemented. Therefore, the presence of actions in the characteristic of the method is mandatory. 2. The order in which such actions are performed in time (successively, simultaneously, in various combinations). Listing actions in the description of the method without indicating their relationship, as a rule, does not allow such a method to be implemented.

If the method includes several actions, then it is necessary to know the relationship of these actions in time, i.e. know which actions are performed sequentially one after another, which ones are performed simultaneously. Changing the order in which actions are performed may result in the process not being able to be carried out.

Conditions for the implementation of actions: mode; the use of substances (raw materials, reagents, catalysts, etc.), devices (devices, tools, equipment, etc.).

The conditions for the implementation of actions include: - modes (for example, time, temperature, pressure, speed), specified limits (for example, stretch to a plastic state), parameters (for example, magnetic, electric and other fields) and other characteristics of actions (for example, frequency or the length of electromagnetic waves, energy, power, etc.) constituting the method; - the use of certain substances (raw materials, materials, etc.), without which it is impossible to perform the actions that make up the method; - the use of certain devices (devices, tools, equipment), without which it is impossible to perform one or another action included in the method.

V. CONCLUSION

National legal doctrine and international doctrine (N. Imomov, O. Okyulov) recognize as an invention a technical solution of a substance and a method used in industry. There are differences of the invention as a method. We believe that the technical solution should be recognized as an invention in relation to a method used not only in industry, but also in agriculture.

¹⁷ Афанасьев Д. Основные положения современного патентного права: предпосылки формирования и развития. //Журнал зарубежного законодательства и сравнительного правоведения. 2021. 91-104.

If the object of the invention is a method, then it is possible to restrict the use of the method, as well as any actions associated with a product that can be obtained by a patented method (Article 28 of the TRIPS Agreement).

Each method necessarily contains operations (techniques) that are interconnected with each other. Therefore, we consider it appropriate to provide for the following in the law:

The method includes the process of performing interrelated actions on a material object using material means. To characterize the methods, in particular, the following features are used:

the presence of an action or a set of actions;

the order in which such actions are performed in time (successively, simultaneously, in various combinations, etc.);

conditions for the implementation of actions, mode, use of substances (raw materials, reagents, catalysts, etc.), devices (devices, tools, equipment, etc.), strains of microorganisms, plant and / or animal cell lines.

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