

**TOSHKENT DAVLAT YURIDIK UNIVERSITETI HUZURIDAGI ILMIY
DARAJALAR BERUVCHI DSc.07/03.06.2023.Yu.22.04 RAQAMLI ILMIY
KENGASH**

TOSHKENT DAVLAT YURIDIK UNIVERSITETI

ALMOSOVA SHAHNOZA SOBIROVNA

**JAHON SAVDO TASHKILOTI DOIRASIDA INTELLEKTUAL MULK
HUQUQLARINING XALQARO-HUQUQIY TARTIBGA SOLINISHI**

12.00.10 – Xalqaro huquq

**Yuridik fanlar falsafa doktori (PhD) dissertatsiyasi
AVTOREFERATI**

Toshkent – 2024-yil

Falsafa doktori (PhD) dissertatsiyasi avtoreferati mundarijasi

Contents of the abstract of the dissertation of the Doctor of Philosophy (PhD)

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Falsafa doktori (PhD) dissertatsiyasi mavzusi O‘zbekiston Respublikasi Oliy ta’lim, fan va innovatsiyalar vazirligi huzuridagi Oliy attestatsiya komissiyasida B2023.4.PhD/Yu1259 raqam bilan ro‘yxatga olingan.

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KIRISH (Doktorlik dissertatsiyasi annotatsiyasi)

Dissertatsiya mavzusining dolzarbligi va zarurati. Dunyoda sun'iy intellekt va raqamli texnologiyalar rivojlanishi hamda kundan-kunga yangi savdo belgilari, xizmat ko'rsatish turlari va barcha sohalarda innovatsiyalar soni ko'payib borayotgan bir davrda intellektual mulk huquqlarining tijoriy ahamiyati yanada ortib bormoqda. Ushbu huquqlar himoyasi jahon savdosining 98 foizini nazorat qiluvchi 166 ta mamlakat a'ziligiga ega¹ Jahon Savdo Tashkiloti doirasiga kiritilganligi, shu bilan birga, bugungi kunda soni 3000ga yaqinlashib qolgan ikkitomonlama investitsiya shartnomalari² va 371 ta amaldagi mintaqaviy savdo shartnomalari³ ham tobora intellektual mulk bilan bog'liq bandlarni qamrab olayotgani xalqaro savdo munosabatlarida intellektual mulk huquqlarini himoya qilishning xalqaro-huquqiy asoslarini yanada takomillashtirishni taqozo etmoqda.

Jahonda davlatlar tomonidan intellektual mulk huquqlarini muhofaza qilishning xalqaro-huquqiy tizimini takomillashtirish, ushbu huquqlarning xalqaro savdo aloqalariga tobora kengroq kirib borish tendensiyalarini kompleks tahlil qilishga oid ilmiy tadqiqotlarni bajarishga alohida ahamiyat berilmoqda. Xususan, Birlashgan Millatlar Tashkilotining Barqaror rivojlanish maqsadlarining 9.5-maqсадida⁴ ham innovatsiyalarni rag'batlantirish va ilmiy-tadqiqot va tajriba-konstruktorlik ishlanmalarni oshirish asosiy yo'nalishlardan qilib belgilanishi hamda 2001-yilda intellektual mulk va jamoat salomatligi o'rtasida muayyan darajada muvozanat o'rnatish imkonini bergan Doha deklaratsiyasining qabul qilinishi ortidan intellektual mulk huquqlari muhofazasi tizimida ma'lum natijalarga erishilgan. Shunga qaramay, zamonaviy sharoitlar ushbu tizimning nazariy, amaliy va huquqiy muammolarini kompleks tarzda o'rganishni, ayniqsa, bu boradagi yangi shakllanib kelayotgan masalalar, intellektual mulk va jamoat salomatligi, biotexnologiyalar, texnologiyalar transferi, sun'iy intellekt o'rtasidagi munosabatlarni jahon savdosini tartibga solish borasidagi tashkillashtiruvchi ahamiyati nuqtai nazaridan Birlashgan Millatlar Tashkilotiga qiyoslanuvchi Jahon Savdo Tashkiloti (keyingi o'rinlarda – JST) doirasiga qamrab olishni dolzarb qilib qo'ymoqda.

JSTga a'zo bo'lish O'zbekiston Respublikasi tashqi iqtisodiy siyosatining asosiy yo'nalishlaridan biri bo'lib qolmoqda. Jumladan, 2023-yilning 19-sentyabrida BMT Bosh Assambleyasi 78-sessiyasida mamlakat prezidenti tomonidan Jahon savdo tashkilotiga to'laqonli a'zo bo'lishni iqtisodiyotimizni liberallashtirish yo'lidagi ustuvor vazifa sifatida ta'kidlandi⁵. O'zbekiston Respublikasi Prezidentining "O'zbekiston-2030" strategiyasi to'g'risida"gi Farmonining 93-maqсадida ham milliy qonunchilikni va huquqni qo'llash amaliyotini Jahon savdo tashkilotining qoida, me'yor va bitimlariga moslashtirish 2030-yilgacha erishiladigan maqsadlarning samaradorlik ko'rsatkichi sifatida belgilangan. Shu munosabat bilan, O'zbekiston qonunchiligini JSTning asosiy bitimlari talablari, jumladan, intellektual mulk

¹ Who we are: https://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm

² Investment Policy Hub: <https://investmentpolicy.unctad.org/international-investment-agreements>

³ Regional Trade Agreements Database: <http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>

⁴ The Global Goals. Goal 9: <https://www.globalgoals.org/goals/9-industry-innovation-and-infrastructure/>

⁵ O'zbekiston Respublikasi Prezidenti Sh.Mirziyoyevning BMT Bosh Assambleyasi 78-sessiyasidagi nutqi: <https://president.uz/oz/lists/view/6679>

huquqlarining savdoga oid jihatlari to'g'risidagi bitimi (TRIPS bitimi) normalari bilan uyg'unlashtirish masalalari dolzarb ahamiyat kasb etmoqda. O'zbekiston Respublikasi Raqobat qo'mitasi tomonidan taqdim etilgan ma'lumotlarga ko'ra, oxirgi yillar davomida respublikamiz bo'yicha nohalol raqobat bo'yicha kelib tushgan shikoyatlar soni 7 martaga ko'paygan⁶ bir davrda qonunchiligimizni jahon standartlariga uyg'unlashtirish nafaqat respublikaning yirik moliyaviy tashkilotlarga integratsiyalashuvida, shuningdek, optimal milliy muhofaza rejimini yaratishda juda muhim.

O'zbekiston Respublikasi Prezidentining 2022-yil 28-yanvardagi PF-60-sonli "2022-2026-yillarga mo'ljallangan Yangi O'zbekistonning taraqqiyot strategiyasi to'g'risida"gi va 2023-yil 11-sentyabrdagi PF-158-sonli "O'zbekiston-2030" strategiyasi to'g'risida"gi Farmonlari, 2021-yil 28-yanvardagi PQ-4965-sonli "Intellektual mulk sohasini yanada rivojlantirishga oid qo'shimcha chora-tadbirlar to'g'risida"gi, 2022-yil 26-apreldagi PQ-221-sonli "Intellektual mulk obyektlarini muhofaza qilish tizimini takomillashtirish chora-tadbirlari to'g'risida"gi hamda 2023-yil 2-iyundagi PQ-181-sonli "O'zbekiston Respublikasining Jahon savdo tashkilotiga a'zo bo'lish jarayonini jadallashtirishga doir qo'shimcha chora-tadbirlar to'g'risida"gi qarorlari va mavzuga oid boshqa qonun hujjatlarida belgilangan vazifalarni amalga oshirishda ushbu dissertatsiya tadqiqoti muayyan darajada xizmat qiladi.

Tadqiqotning respublika fan va texnologiyalari rivojlanishining asosiy ustuvor yo'nalishlariga muvofiqligi. Dissertatsiya tadqiqoti respublika fan va texnologiyalari rivojlanishining I. "Axborotlashgan jamiyat va demokratik davlatni ijtimoiy, huquqiy, iqtisodiy, madaniy, ma'naviy-ma'rifiy rivojlantirishda innovasion g'oyalar tizimini shakllantirish va ularni amalga oshirish yo'llari" ustuvor yo'nalishiga muvofiq bajarilgan.

Muammoning o'rganilganlik darajasi. Mustaqillik yillarida intellektual mulk huquqlari doirasida bir qancha olimlarimiz anchagina izlanishlar olib borganlar. Tadqiqot mavzusining turli jihatlari huquqshunoslikning turli yo'nalishlarida tadqiq etilganligini ta'kidlab o'tish lozim. Jumladan, intellektual mulk obyektlarini fuqarolik-huquqiy tartibga solinishi, tijoratlashtirish masalalari va ular bilan bog'liq nizolarni sudlarda ko'rishning ayrim jihatlari milliy huquqshunos olimlar X.Rahmonqulov, O.Oqyulov, Sh.Shoraxmetov, B.Toshev, N.Imomov, Z.Akramxodjayeva, S.Safoeva, I.Rustambekov va boshqalar tomonidan tadqiq etilgan bo'lsa-da, bu sohadagi xalqaro standartlar, ayniqsa, milliy qonunchilikni xalqaro standartlarga muvofiqlashtirish masalalari yetarlicha o'rganilmagan.

B.Toshev tomonidan xalqaro tashkilotlarning mualliflik huquqiga oid aktlarining huquqiy maqomi mavzusi doirasida ushbu sohadagi xalqaro-huquqiy aktlar va xalqaro-huquqiy normalar tadqiq qilingan.

X.Islamxodjaev, Z.Kamilova, Sh.Shodixodjaev, U.Yakubxodjayev, R.Azxadjayeva, S.Usmanova kabi olimlarimiz esa JST bo'yicha tashkilot faoliyatining har xil yo'nalishlari doirasida tadqiqotlar olib borgan, xususan, X.Islamxodjaev O'zbekistonning JSTga a'zo bo'lishining tashkiliy-huquqiy jihatlari, Z.Kamilova

⁶ <https://uzreport.news/analytics/zashita-intellektualnoy-sobstvennosti-v-uzbekistane-problemi-i-puti-ih-resheniya>

JST bilan xalqaro hamkorlik doirasida innovatsion integratsiyaviy protseduralarni, Sh.Shodixodjaev JST va rivojlanayotgan mamlakatlar doirasida nizolarni hal etish masalalarini, U.Yakubxodjayev JSTning huquqiy arxitekturasi va uning assimetriyalarini, R.Azxodjayeva JST doirasida sog'liqni saqlashning xalqaro huquqiy tartibga solinishi masalalarini tadqiq qilgan. Shu bilan birga, Z.Ubaydullaev, B.Toshev, A.Kamarov tomonidan xalqaro savdo huquqining ba'zi tomonlari o'rganilgan. A.Yuldashov esa o'z ilmiy ishlarida tadqiqot mavzusining turli jihatlari yuzasidan keng tadqiqotlar olib borgan. Garchi tadqiqot mavzusi doirasida muayyan ilmiy ishlanmalar mavjud bo'lsa-da, JST doirasida intellektual mulk huquqlarining xalqaro-huquqiy tartibga solinishi bo'yicha yagona monografik tadqiqot olib borilmaganligini ko'rishimiz mumkin.

MDH mamlakatlari olimlarining, shu jumladan, D.Dvornikov, A.Azarov, Yu.Matveyev, N.Karpova, V.Shumilov, A.Tsepov ilmiy ishlarida tadqiqot mavzusi yoritilgan, shuningdek, K.Remchukov, I.Dyumulen, I.Sergeev kabi olimlar asarlarining ma'lum boblari aynan intellektual mulkning savdo jihatlari yoki JST doirasida himoya qilinishiga bag'ishlangan.

Shu bilan bir qatorda, tadqiqot davomida ko'p sonli g'arb olimlari, masalan, V.den Bosch, C.Deere, Carlos M. Correa, J.Malbon, Ch.Lawson, D.Matthews, F.Abbot, K.Peter, M.Mina, M.Carlos, H.Jackson, T.Cottier, E.Solovy, P.Krishnamurthy, Grosse Ruse-Khan ilmiy ishlaridan foydalanildi⁷.

Dissertatsiya tadqiqotining dissertatsiya bajarilgan oliy ta'lim muassasasining ilmiy-tadqiqot ishlari rejalari bilan bog'liqligi. Dissertatsiya mavzusi Toshkent davlat yuridik universitetining ilmiy tadqiqot ishlar rejasidagi "Milliy qonunchilikni Jahon Savdo Tashkiloti bitim, qoida va me'yorlariga muvofiqlashtirish muammolari" mavzusidagi ilmiy tadqiqotlarning ustuvor yo'nalishlari doirasida amalga oshirilgan.

Tadqiqotning maqsadi JST doirasida savdoga oid intellektual mulk huquqlarini himoya qilish, O'zbekiston Respublikasi qonunchiligini TRIPS bitimi normalari bilan uyg'unlashtirish hamda intellektual mulk huquqlari muhofazasining xalqaro va milliy mexanizmlarini takomillashtirish bo'yicha ilmiy asoslantirilgan taklif va tavsiyalar ishlab chiqishdan iborat.

Tadqiqotning vazifalari:

savdoga oid intellektual mulk huquqlarini xalqaro-huquqiy tartibga solishning nazariy masalalarini kompleks o'rganish;

savdoga oid intellektual mulk huquqlari muhofazasining universal va mintaqaviy shartnomaviy huquqiy asoslarini tadqiq qilish;

savdoga oid intellektual mulk huquqlarini xalqaro-huquqiy tartibga soluvchi institutsional asoslarni tadqiq etish va ularni tasniflash;

JST doirasida intellektual mulk huquqlarini himoya qilishning huquqiy asoslarini tadqiq qilish;

JST doirasida intellektual mulk huquqlarini himoya qilishning institutsional mexanizmini ko'rib chiqish;

⁷ Bu va boshqa manbalar dissertatsiyaning foydalanilgan adabiyotlar ro'yxatida keltirilgan.

TRIPS bitimi normalarini qo'llash bo'yicha JST a'zo-davlatlarining xalqaro-huquqiy majburiyatlarini tahlil qilish;

TRIPS bitimini xorijiy davlatlar amaliyotiga, jumladan Xitoy Xalq Respublikasi, Rossiya Federatsiyasi va Markaziy Osiyo mamlakatlari huquqiy amaliyotiga tatbiq etilishini qiyosiy-huquqiy tahlil qilish;

O'zbekiston Respublikasi qonunchiligini JST intellektual mulk huquqlarini tartibga soluvchi normalari bilan uyg'unlashtirish yuzasidan taklif va tavsiyalar tayyorlash.

Tadqiqotning obykti sifatida JST doirasida intellektual mulk huquqlarini tartibga solish bilan bog'liq xalqaro-huquqiy munosabatlar tizimi olingan.

Tadqiqotning predmetini savdoga oid intellektual mulk huquqlarini xalqaro darajada tartibga soluvchi universal va mintaqaviy xalqaro shartnomalar hamda mexanizmlar, JST doirasida savdoga oid intellektual mulk huquqlarini tartibga solish masalalari, huquqni qo'llash amaliyoti, xorijiy mamlakatlar amaliyoti hamda O'zbekiston Respublikasi qonunchiligini JST intellektual mulk huquqlarini tartibga soluvchi normalari bilan uyg'unlashtirish masalalari tashkil etadi.

Tadqiqotning usullari. Tadqiqot olib borishda qiyosiy-huquqiy tadqiqot, tarixiy, ilmiy manbalarni kompleks tadqiq etish, mantiqiy tahlil etish, umumlashtirish, tizimli yondashuv, empirik tadqiqotlar hamda muammoli vaziyatlar (case law) tahlili kabi usullardan foydalanildi.

Tadqiqotning ilmiy yangiligi quyidagilardan iborat:

O'zbekiston Respublikasi qonunchiligida geografik ko'rsatkich tushunchasi ta'rifini shakllantirishda JSTning TRIPS bitimi matnidagi "reputation" so'zining ma'nosini beruvchi "tanilganligi" yoki "nom qozonganligi" so'zi qo'llanilishi kerakligi asoslantirilgan;

JSTning TRIPS bitimida belgilangan sanoat mulki obyektidan patent egasining rozilgisiz unga mutanosib miqdorda tovon to'lagan holda foydalanilishiga ruxsat berish bilan bog'liq majburiy nomutlaq litsenziyalar berish tartib-taomillarini O'zbekiston Respublikasi qonunchiligida belgilash zarurati asoslantirilgan;

O'zbekiston Respublikasida patentlar bilan muhofaza qilinadigan sanoat mulki obyektlaridan tarkib topgan vositalarni tabiiy ofatlar, halokatlar, epidemiyalar va boshqa favqulodda holatlarda patent egasini xabardor qilgan va mutanosib miqdorda unga tovon to'lagan holda qo'llashga ruxsat berish zarurligi asoslantirilgan;

JST TRIPS bitimining "agar patentlangan usul bilan olingan mahsulot yangi bo'lsa, sud tomonidan javobgarga bunday mahsulotni olish usuli patentlangan usuldan farq qilishini isbotlash majburiyatini yuklash" bo'yicha normasi O'zbekiston Respublikasi milliy qonunchiligida aks etishi zarurligi asoslantirilgan;

O'zbekiston Respublikasi qonunchiligida JST TRIPS bitimida keltirilgan dori mahsulotlariga marketing ruxsatini olish talab etilganda tarkibida yangi kimyoviy moddalar mavjud bo'lgan dori vositasini davlat ro'yxatidan o'tkazish uchun davlat organlariga taqdim etilgan hujjatlardagi oshkor etilmagan ma'lumot ariza beruvchining rozilgisiz oshkor etilmasligi va undan tijorat maqsadlarida foydalanishni ta'qiqlash bilan bog'liq normani mustahkamlash zarurligi asoslantirilgan.

Tadqiqotning amaliy natijalari quyidagilardan iborat:

1995-yil 22-dekabrda Butunjahon Intellektual Mulk Tashkiloti (keyingi o‘rinlarda – BIMT) va Jahon Savdo Tashkiloti o‘rtasidagi amaldagi hamkorlik to‘g‘risidagi Bitimni qayta ko‘rib chiqish zarurati asoslantirilgan;

TRIPS Kengashi tarkibida muayyan intellektual mulk obyekti bo‘yicha ish olib boruvchi alohida qo‘mitalar tashkil etish zarurati asoslab berilgan;

O‘zbekiston Respublikasi uchun JST doirasidagi majburiyatlariga rioya etilishini ta‘minlash maqsadida mamlakat qonunchiligiga tegishli o‘zgartirish va qo‘shimchalarni kiritib borish maqsadida taqdim etiladigan o‘tish davri muddatlarini belgilashga erishish zarurati asoslantirilgan;

Jahon Savdo Tashkiloti bilan ishlash bo‘yicha muzokaralar guruhi tomonidan O‘zbekiston Respublikasining TRIPS bitimi bilan parallel ravishda 2001-yilda qabul qilingan “Intellektual mulkning savdoga oid jihatlari bo‘yicha bitim va jamoat salomatligi to‘g‘risida”gi Doha deklaratsiyasi ishtirokchisiga aylanishini ta‘minlash maqsadga muvofiqligi asoslantirilgan;

rivojlanayotgan davlatlarning TRIPS bitimini milliy qonunchilikka tatbiq etish borasidagi tajribalarini o‘rganish va O‘zbekiston Respublikasi uchun qo‘llash zarurligi asoslantirilgan;

JST-TRIPS bo‘yicha tadbirkorlarga pro bono konsultatsiya markazlarini tashkil etish zarurligi asoslantirib berilgan;

O‘zbekiston Respublikasi milliy qonunchiligini JSTning TRIPS bitimi bilan uyg‘unlashtirish zarurati asoslantirilgan.

Tadqiqot natijalarining ishonchliligi. Tadqiqot ishida foydalanilgan nazariy ma‘lumotlar, xalqaro huquq va milliy qonunchilik normalari, huquqni qo‘llash amaliyoti, statistik ma‘lumotlar va sud amaliyoti materiallari rasmiy manbalardan olingani, xorijiy tajriba va milliy qonun hujjatlarining o‘zaro tahlil qilingani, tadqiqot natijalari nufuzli milliy va xorijiy nashrlarda e‘lon qilinganligi, ishlab chiqilgan taklif va tavsiyalarning amaliyotga joriy etilganligi vakolatli tuzilmalar tomonidan tasdiqlanganligi bilan izohlanadi.

Tadqiqot natijalarining ilmiy va amaliy ahamiyati. Tadqiqot natijalarining ilmiy ahamiyati dissertatsiyada ko‘rib chiqilgan muammolarning dolzarbligiga, xulosalar va takliflarning asoslantirilganlik darajasiga qarab belgilanadi. Mazkur tadqiqot natijasida olingan ilmiy xulosalardan ilmiy-tadqiqot faoliyatida, “JST huquqi”, “JST doirasida nizolarni hal etish”, “Intellektual mulk huquqi”, “Xalqaro intellektual mulk huquqi” kabi o‘quv kurslarini ilmiy-nazariy boyitishda, ma‘ruzalar va amaliy mashg‘ulotlarni o‘tkazishda, o‘quv va uslubiy qo‘llanmalarni tayyorlashda foydalanish mumkinligida ko‘rinadi.

Tadqiqot natijalarining amaliy ahamiyati shundaki, unda bayon etilgan qoidalar va xulosalardan qonun ijodkorligi faoliyatida, normativ-huquqiy hujjatlar tayyorlash, ularga o‘zgartirish va qo‘shimchalar kiritish, jumladan, intellektual mulk sohasidagi qonunchilik normalarini va huquqni qo‘llash amaliyotini takomillashtirishda foydalanilishi mumkinligi bilan belgilanadi.

Tadqiqot natijalarining joriy qilinishi. Tadqiqot natijalaridan quyidagilarda foydalanilgan:

TRIPS bitimi 22-moddasidagi “geografik ko‘rsatkich” tushunchasi ta’rifi hamda O‘zbekiston Respublikasining “Geografik ko‘rsatkichlar to‘g‘risida”gi Qonunidagi “geografik ko‘rsatkich” tushunchasiga berilgan ta’rifni o‘zaro muvofiqlashtirish maqsadida bitim mazmunidagi “reputation” atamasining ma’nosini beruvchi “tanilganligi” yoki “nom qozonganligi” so‘zini kiritish bo‘yicha taklifi O‘zbekiston Respublikasi “Geografik ko‘rsatkichlar to‘g‘risida”gi Qonunning 3-moddasini shakllantirishda foydalanilgan (O‘zbekiston Respublikasi Oliy Majlisi Senatining Sud-huquq masalalari va korrupsiyaga qarshi kurashish qo‘mitasining 2022-yil 15-apreldagi 10-sonli dalolatnomasi). Bu taklif O‘zbekiston Respublikasi milliy qonunchiligida “tovar kelib chiqqan joy nomi” hamda “geografik ko‘rsatkich” atamalarini o‘zaro farqlashda aniqlik kiritishga xizmat qilgan;

O‘zbekiston Respublikasi “Ixtirolar, foydali modellar va sanoat namunalari to‘g‘risida”gi Qonunining 11¹-moddasi matnini ishlab chiqishda “Intellectual mulk huquqlarining savdoga oid jihatlari” bo‘yicha bitimning 31(bis)-moddasi va bitim ilovasida keltirilgan majburiy litsenziyalash tizimini O‘zbekiston Respublikasi qonunchiligiga joriy etish maqsadida sanoat mulki obyektidan patent egasining rozilgisiz mutanosib miqdorda unga tovon to‘lagan holda foydalanilishiga ruxsat berish hamda majburiy oddiy (nomutlaq) litsenziyalar berish tartib-taomillarini belgilash bo‘yicha taklifi O‘zbekiston Respublikasi “O‘zbekiston Respublikasining ayrim qonun hujjatlariga O‘zbekiston Respublikasi milliy qonunchiligini Jahon savdo tashkiloti bitimlariga muvofiqlashtirishni nazarda tutuvchi o‘zgartish va qo‘shimchalar kiritish to‘g‘risida”gi Qonunining 1-moddasi 2-qismini shakllantirishda foydalanilgan (O‘zbekiston Respublikasi Oliy Majlisi Qonunchilik Palatasining 2024-yil 6-martdagi 02/4-61-son dalolatnomasi). Bu O‘zbekiston Respublikasida sanoat mulki obyektidan patent egasining rozilgisiz foydalanish bilan bog‘liq qonunchilik bazasi hamda amaliyotini JST TRIPS bitimi normalari bilan uyg‘unlashtirishga xizmat qilgan;

O‘zbekiston Respublikasi “Ixtirolar, foydali modellar va sanoat namunalari to‘g‘risida”gi Qonunining 12-moddasi 2-qismi 2-bandida keltirilgan patentlar bilan muhofaza qilinadigan sanoat mulki obyektlaridan tarkib topgan vositalarni tabiiy ofatlar, halokatlar, epidemiyalar va boshqa favqulodda holatlarda patent egasini xabardor qilgan va unga mutanosib miqdorda tovon to‘lagan holda qo‘llashga ruxsat berish bo‘yicha taklifi O‘zbekiston Respublikasi “O‘zbekiston Respublikasining ayrim qonun hujjatlariga O‘zbekiston Respublikasi milliy qonunchiligini Jahon savdo tashkiloti bitimlariga muvofiqlashtirishni nazarda tutuvchi o‘zgartish va qo‘shimchalar kiritish to‘g‘risida”gi Qonunining 1-moddasi 3-qismini shakllantirishda foydalanilgan (O‘zbekiston Respublikasi Oliy Majlisi Qonunchilik Palatasining 2024-yil 6-martdagi 02/4-61-son dalolatnomasi). Bu hukumatga favqulodda holatlarda patent huquqlaridan istisno qilishga ruxsat berish barobarida patent egalarining ham patentdan kelib chiquvchi iqtisodiy manfaatlarini himoya qilishga xizmat qilgan;

O‘zbekiston Respublikasining “Ixtirolar, foydali modellar va sanoat namunalari to‘g‘risida”gi Qonuni 30-moddasi ikkinchi qismini “agar patentlangan usul bilan olingan mahsulot yangi bo‘lsa, aksini isbotlovchi dalillar mavjud bo‘lmagan taqdirda, aynan o‘xshash mahsulot patentlangan usuldan foydalanish orqali olingan hisoblanadi, shu holatda sud tomonidan javobgarga bunday mahsulotni olish usuli patentlangan usuldan farq

qilishini isbotlash majburiyati yuklanishi mumkin” so‘zlari bilan to‘ldirish orqali milliy qonunchilikni “Intellectual mulk huquqlarining savdoga oid jihatlari” bo‘yicha bitim 34-moddasi birinchi qismi “a” kichik bandiga uyg‘unlashtirish to‘g‘risidagi taklifi O‘zbekiston Respublikasi “O‘zbekiston Respublikasining ayrim qonun hujjatlariga O‘zbekiston Respublikasi milliy qonunchiligini Jahon savdo tashkiloti bitimlariga muvofiqlashtirishni nazarda tutuvchi o‘zgartish va qo‘shimchalar kiritish to‘g‘risida”gi Qonunining 1-moddasi 4-qismini shakllantirishda foydalanilgan (O‘zbekiston Respublikasi Oliy Majlisi Qonunchilik Palatasining 2024-yil 6-martdagi 02/4-61-son dalolatnomasi). Bu O‘zbekiston Respublikasi qonunchiligidagi intellektual mulk huquqlarining usulga oid huquqbuzilish holatlarida isbotlash bilan bog‘liq normalarni takomillashtirishga xizmat qilgan;

O‘zbekiston Respublikasi “Dori vositalari va farmatsevtika faoliyati to‘g‘risida”gi Qonunining 12-moddasini “Intellectual mulk huquqlarining savdoga oid jihatlari bo‘yicha” bitimning 39-moddasi 3-qismi bilan muvofiqlashtirish maqsadida dori mahsulotlariga marketing ruxsatini olish talab etilganda tarkibida yangi kimyoviy moddalar mavjud bo‘lgan dori vositasini davlat ro‘yxatidan o‘tkazish uchun davlat organlariga taqdim etilgan hujjatlardagi oshkor etilmagan ma’lumot ariza beruvchining rozilgisiz oshkor etilmasligi va undan tijorat maqsadlarida foydalanishni ta’qiqlash bo‘yicha taklifi O‘zbekiston Respublikasi “O‘zbekiston Respublikasining ayrim qonun hujjatlariga O‘zbekiston Respublikasi milliy qonunchiligini Jahon savdo tashkiloti bitimlariga muvofiqlashtirishni nazarda tutuvchi o‘zgartish va qo‘shimchalar kiritish to‘g‘risida”gi Qonunining 4-moddasini shakllantirishda foydalanilgan (O‘zbekiston Respublikasi Oliy Majlisi Qonunchilik Palatasining 2024-yil 6-martdagi 02/4-61-son dalolatnomasi). Bu milliy qonunchiligimizda oshkor etilmagan ma’lumotning huquqiy himoyasini oshirishga xizmat qilgan.

Tadqiqot natijalarining aprobatsiyasi. Tadqiqot natijalari 4 ta ilmiy-amaliy anjumanda, jumladan 2 ta xalqaro, 2 ta respublika miqyosidagi ilmiy-amaliy konferensiyada muhokamadan o‘tkazilgan.

Tadqiqot natijalarining e‘lon qilinganligi. Dissertatsiya mavzusi bo‘yicha jami 17 ta ilmiy ish, jumladan, 1 ta monografiya, 13 ta ilmiy maqola (3 ta xorijiy jurnallarda) chop etilgan.

Dissertatsiyaning tuzilishi va hajmi. Dissertatsiya tarkibi kirish, uchta bob, xulosa, foydalanilgan adabiyotlar ro‘yxati va ilovalardan iborat. Hajmi 142 (foydalanilgan adabiyotlar ro‘yxati qismidan tashqari) bet.

DISSERTATSIYANING ASOSIY MAZMUNI

Dissertatsiya ishining **kirish** qismida ilmiy-tadqiqot mavzusining dolzarbligi va zarurati asoslantirilgan, tadqiqotning maqsadi va vazifalari, obykti va predmeti yoritilgan, shuningdek, respublika fan va texnologiyalari rivojlanishining ustuvor yo‘nalishlariga mosligi asoslantirilgan, dissertatsiya mavzusi bo‘yicha milliy va xorijiy olimlarning ilmiy tadqiqotlari ya’ni muammoning o‘rganilganlik darajasi, mavzuning dissertatsiya bajarilayotgan oliy ta’lim muassasasining ilmiy-tadqiqot ishlari rejasi bilan aloqadorligi, tadqiqot usullari, ilmiy va amaliy ahamiyati ochib berilgan. Shuningdek, tadqiqotlar natijalarining amaliyotga joriy qilinishi aprobatsiyasi, nashr etilgan ishlar va dissertatsiyaning hajmi haqida ma’lumotlar keltirilgan.

Dissertatsiyaning **“Xalqaro savdoda intellektual mulk huquqlarini tartibga solishning nazariy-huquqiy jihatlari”** deb nomlangan birinchi bobida intellektual mulk huquqlarini xalqaro darajada tartibga solishning nazariy asoslari, mavjud ilmiy nazariy konsepsiyalar, savdoga oid intellektual mulk huquqlari xalqaro-huquqiy muhofazasining shartnomaviy-huquqiy asoslari, xalqaro darajada savdoga oid intellektual mulk huquqlarini tartibga solishning universal va mintaqaviy institutsional mexanizmlari ilmiy tahlil etilgan.

Tadqiqot ishida dissertant tomonidan “savdoga oid intellektual mulk huquqlari” va “intellektual mulk huquqlarining xalqaro muhofaza tizimi” tushunchalariga mualliflik ta’rifi ishlab chiqilgan. Garchi intellektual mulk huquqlarini tartibga solishda davlatlar milliy qonunchiligi ko‘proq ahamiyat kasb etsa-da, davlatlar tomonidan ishlab chiqilgan umumiy standartlar bu sohadagi milliy qonunchilikning asosi bo‘lib xizmat qiladi. Intellektual mulk huquqlarining murakkab va ko‘p qirrali tabiatini e’tirof etgan holda, asosiy e’tiborimizni asosan, xususiy shaxslar tomonidan qo‘llaniluvchi intellektual mulkka doir normalarning xalqaro-huquqiy tartibga solinishiga qaratamiz. Bunda milliy huquqning boshqa tarmoqlari singari, intellektual mulk huquqlari muhofazasi ham bir davlat chegaralari bilan cheklanib qolmay transmilliy xarakter kasb etayotganini rad etib bo‘lmaydi. Shu sababli, bugungi global sharoitda, intellektual mulk huquqlarini tartibga solishda, “xalqaro huquq” va “milliy huquq” yondashuvlari bir-biriga ziddiyatli emas, balki bir-birini to‘ldiruvchi (komplimentar) yondashuvlar deb ayta olamiz.

Intellektual mulkning xalqaro savdo sohasiga kirib kelishi va ular o‘rtasidagi bog‘liqlikning xalqaro tan olinishi esa nisbatan yangi hodisadir. Xalqaro savdoda intellektual mulkning tijoriy qiymati oshgani sayin, savdo va intellektual mulk o‘rtasidagi bog‘liqlikning yanada kuchayishi, shu tariqa, savdoga oid (trade-related) yoki savdoga yo‘naltirilgan (trade-oriented) intellektual mulkka e’tibor ortdi. Bu huquqlar nazariy jihatdan, intellektual mulkning faqat mulkiy jihatlari o‘zida aks ettirgan intellektual mulk huquqi tarmog‘i bo‘lib, davlatlarning intellektual mulk qoidalarini buzganlik yoki lozim darajada ijro etmaganligini savdo sanksiyalari tizimiga bog‘laydi. Paragraf davomida dissertant tomonidan davlatning investitsiyaviy jozibadorligiga, uning tashqi savdo hamkori sifatida tanlanishiga va iqtisodiy o‘rta sishiga bevosita ta’sir ko‘rsatganligi sababli intellektual mulk huquqlari “savdo bilan bog‘liq” ekanligi asoslab beriladi.

Dissertant tomonidan savdoga oid intellektual mulk huquqlarining shakllanish tarixi shartli ravishda 3 davrga bo‘linib, ushbu huquqlar evolyutsiyasining har bir davri uchun xos belgilar alohida ajratib ko‘rsatildi. 1994-yilda TRIPS bitimi imzolanishi bilan intellektual mulkning tijoriy ahamiyati jahon miqyosida rasman tan olindi. Bu intellektual mulk huquqlari xalqaro muhofazasi sohasida ilgarigi umumiy intellektual mulk huquqlari himoyasiga qaratilgan BIMT nazoratidagi rejimdan farqli faqat intellektual mulkning savdo bilan bog‘liq jihatlari (tijoriy-mulkiy jihatlari) asoslangan rejim paydo bo‘lishiga sabab bo‘ldi. Aynan shu keyingi rejim bugungi kunda davlatlar o‘rtasidagi ikkitomonlama va ko‘ptomonlama hamkorlikning muhim masalalaridan biriga aylandi, milliy huquq tizimining bir qismi hisoblangan

intellektual mulk huquqlari esa xalqaro huquqning sohalari sanaluvchi xalqaro savdo huquqi va xalqaro investitsiya huquqining ajralmas qismiga aylandi.

1980-yillarda e'tirof etila boshlangan intellektual mulk va savdo o'rtasidagi bog'liqlik intellektual mulk sohasidagi norma ijodkorligiga sezilarli ta'sir ko'rsatdi. Intellektual mulk bo'yicha standartlar davlatlararo savdo shartnomalarining muhim qismiga aylana boshladi, shartnomalarda keltirilgan savdo imtiyozlari davlatning intellektual mulk huquqlari himoya rejimiga qarab belgilanadigan bo'ldi. Shu orqali, intellektual mulk huquqlarining xalqaro tartibotida savdoga oid intellektual mulk huquqlari qamrab olingan xalqaro-huquqiy asoslar (shartnomalar) yaratildi va bu jarayon hali ham davom etmoqda.

Zamonaviy savdo munosabatlarida savdo shartnomalari doirasida olinadigan "tarif imtiyozlari" va intellektual mulk huquqlari muhofazasi rejimi o'rtasida uzviy aloqadorlik paydo bo'ldi. Bu aloqadorlikning institutsional-huquqiy asoslarini davlatlar tomonidan tuzilgan ko'ptomonlama va ikkitomonlama erkin savdo (FTA), investitsiya (BIT), imtiyozli savdo (PTA) shartnomalari tashkil qilmoqda. Xususan, JST doirasida erishilgan TRIPS bitimi bu borada markaziy rol o'ynamoqda.

Tadqiqot jarayonida "Savdoga oid intellektual mulk huquqlari" muhofazasi bo'yicha xalqaro shartnomalar klassifikatsiya (ishtirokchi davlatlarning soniga ko'ra, amal qilish doirasiga ko'ra, tartibga solish obyektiga ko'ra, qaysi tashkilot tomonidan nazorat qilinishiga ko'ra) hamda bu sohadagi xalqaro institutsional mexanizmlar (xalqaro tashkilotlar) klassifikatsiyasi (davlatlar a'ziligiga ko'ra, a'zolarining geografik joylashuviga ko'ra, faoliyat predmeti bo'yicha) yaratildi.

Dissertatsiyaning ikkinchi bobi "**JST doirasida intellektual mulk huquqlarini himoya qilish**" masalalariga bag'ishlanadi. Bunda tashkilot doirasida savdoga oid intellektual mulk huquqlarining huquqiy asoslari va ushbu huquqlarni himoya qilishning institutsional mexanizmi tahlil qilingan.

Ikkinchi bobning birinchi paragrafi "JST doirasida intellektual mulk huquqlarini himoya qilishning huquqiy asoslari" deb nomlanib, unda TRIPS bitimi va u bilan bevosita aloqador shartnomalarning huquqiy tabiati yoritilgan.

Bu paragrafda dissertant nazariyada soha olimlari tomonidan bitimning JST tizimi bilan to'la uyg'unlashmaganligi borasida bahslar hamda intellektual mulk huquqlarining savdoga potensial to'siq ekanligi va shu orqali, savdoni liberallashtirishga to'sqinlik qilishi mumkinligi haqidagi fikrlarni tahlil qiladi. Bu boradagi bahslarda ustuvor yondashuv intellektual mulk huquqlarini milliy darajada qo'llash bozorga kirishga (market access) nisbatan ko'rinmas to'siq ekanligidir. TRIPS muqaddimasidagi "intellektual mulk huquqlarini ta'minlash bo'yicha chora-tadbirlar va tartib-taomillar qonuniy savdoga to'siq bo'lmasligi kerak" degan norma hamda bitimning 7-moddasidagi bitimni "ijtimoiy va iqtisodiy farovonlikka, huquq va majburiyatlar muvozanatiga yordam beradigan tarzda" qo'llashni nazarda tutuvchi qoidalar esa uning JSTning umumiy savdoni liberallashtirish maqsadiga mosligini tasdiqlaydi.

Dissertant paragraph davomida "TRIPS-plus" fenomenini bugungi kunda JST doirasida savdoga potensial tashqi xavf sifatida ko'radi. Ma'lumki, rivojlangan davlatlar (ayniqsa Amerika Qo'shma Shtatlari) bozordagi hukmron mavqeidan

foydalangan holda “TRIPS-plus” normalarini rivojlanayotgan davlatlarga nisbatan qo‘llamoqda. Dissertant esa davlatlarning ikkitomonlama shartnomalarga kirishish erkinligiga putur yetkamagan holda “TRIPS-Plus” shartnomalarini butunlay taqiqlash yoki butun dunyo bo‘ylab tarqalishini oldini olish imkonsiz ekanligini ta’kidlab, JST va BIMT o‘rtasidagi kelishuvda bevosita TRIPS moslashuvchan qoidalari istisnolarini davlat tomonidan qo‘llanilishini cheklovchi “TRIPS-plus” normalarga qarshi kurash bo‘yicha aniq vakolatlarni aks ettirish ham maqsadga muvofiq deb hisoblaydi.

Shu bilan birga, tadqiqotchining fikricha, TRIPS bitimi raqamli texnologiyalar rivojlanishi sharoitida isloh qilinishi, jumladan, internetda intellektual mulk huquqlarini himoya qilish, shu bilan birga, an’anaviy bilimlar, genetik resurslar hamda biotexnologik innovatsiyalarni o‘zida qamrab olishi zarur.

Ikkinchi bobning ikkinchi paragrafi “JST doirasida intellektual mulk huquqlarini himoya qilishning institutsional mexanizmi” deb ataladi. JST doirasida intellektual mulk huquqlarini himoya qilishning institutsional mexanizmini TRIPS Kengashi va JST nizolarni hal etish organi tashkil etadi. TRIPS bitimi ijrosini nazorat qilish uchun mas’ul TRIPS Kengashi JSTning intellektual mulk masalalari bo‘yicha markaziy organi hisoblanadi, uning vakolatlari bitim normalarini a’zo davlatlarning milliy qonunchiligiga tatbiq etishdan tortib davlatlarning intellektual mulk masalalariga taalluqli xalqaro hamkorlikkacha qamrab oladi. JST nizolarni hal etish organi esa intellektual mulk obyektlariga nisbatan huquqlarni tiklashning nisbatan yangi va samarali vositasi bo‘lib, ungacha mavjud bo‘lgan vositalardan xalqaro huquqning “hard law” normalariga asoslangani bilan ajralib turadi. Dissertant tomonidan JSTning Nizolarni hal etish organi xususiy shaxslarning ichki va xalqaro tijoriy nizolarini ko‘rib chiquvchi BIMT Arbitraj va mediatsiya markaziga qaraganda intellektual mulk obyektlariga nisbatan huquqlarni tiklashning nisbatan samarali vositasi hisoblanishi asoslantirilgan.

Bundan tashqari, tadqiqotchining fikriga ko‘ra, TRIPS Kengashi tarkibiga tashkiliy jihatdan GATT Kengashiga o‘xshab muayyan intellektual mulk obyekti bo‘yicha ish olib boruvchi alohida qo‘mitalarga bo‘linishi uning ish samaradorligini oshiradi.

Dissertatsiyaning uchinchi bobi **“JSTning savdoga oid intellektual mulk huquqlari normalarini qo‘llashning o‘ziga xos jihatlari”**ga bag‘ishlanib, mazkur bobda muallif TRIPS bitimini qo‘llash bo‘yicha davlatlar majburiyatlari, undagi istisno holatlar, ushbu bitimning xorijiy davlatlar amaliyotiga tadbiq etilishi hamda O‘zbekiston Respublikasi qonunchiligini JST intellektual mulk huquqlarini tartibga soluvchi normalar bilan uyg‘unlashtirish masalalarini tadqiq qiladi.

Uchinchi bob birinchi paragrafi “JSTga a’zo davlatlarda TRIPS bitimi normalarini qo‘llash bo‘yicha xalqaro-huquqiy majburiyatlar” deb nomlanib unda intellektual mulk huquqlari muhofazasi sohasidagi TRIPS bitimi normalarini ichki qonunchilik va amaliyotda qo‘llash bilan bog‘liq 4 ta yo‘nalishdagi ((1) fuqarolik va ma’muriy tartiblar va choralar; 2) vaqtinchalik choralar; 3) bojxona nazoratiga oid maxsus talablar; 4) jinoiy protseduralar) majburiyatlar yoritib berilgan.

Bundan tashqari, dissertant tomonidan bitimning har bir moslashuvchan qoidalari birma-bir tahlil etilib, ushbu holatlar “case law” orqali o‘rganildi. Bu borada olimlar

qarashlari muhokama etilib, bitimni milliy qonunchilikka qo'llashning o'ziga xos elementlari o'rganildi. Bu borada yuzaga keladigan texnik qiyinchiliklar, milliy ekspertlar yetishmasligi va tegishli me'yoriy-huquqiy bazaning sustligi kabi sabablar tufayli davlatlar tomonidan bitim istisnolaridan foydalanish kutilganidek keng tarqalgan amaliyotga aylanmagan degan xulosa shakllantirildi. Bitimning parallel import (bitimning 6-moddasi), patent huquqlariga nisbatan umumiy istisnolar (30 va 31-modda) hamda majburiy litsenziyalash (31(bis)-modda) bilan bog'liq moslashuvchan qoidalari davlatlar amaliyotida keyslar doirasida tahlil qilindi.

“TRIPS bitimini qo'llash bo'yicha xorijiy davlatlar huquqiy amaliyotining qiyosiy-huquqiy tahlili (Xitoy Xalq Respublikasi, Rossiya Federatsiyasi va Markaziy Osiyo mamlakatlari misolida)” deb nomlanuvchi ikkinchi paragrafda dissertant tomonidan, xorijiy amaliyotni o'rganish uchun Xitoy Xalq Respublikasi, Rossiya Federatsiya va Markaziy Osiyo mamlakatlari tanlab olindi. Tahlil natijasida dissertant o'rganilgan davlatlar tajribasini umumlashtirib bitimni amaliyotga tatbiq etish jarayonlaridagi umumiylik va farqli jihatlarni yoritadi hamda O'zbekiston Respublikasi amaliyoti uchun tavsiyalar ishlab chiqadi. Xususan, o'rganilgan mamlakatlar tajribasidan bitimning o'tish davrlari bilan bog'liq imtiyozlarini, XXRdagi jamoat salomatligi sohasida majburiy litsenziyalash amaliyotini milliy qonunchilikda qo'llash bilan bog'liq tajribasini, RF va Markaziy Osiyo mamlakatlaridan esa bitimning bojxona choralari bilan bog'liq normalarini implementatsiya qilish tajribasini, XXR va RFdagi ixtisoslashtirilgan intellektual mulk sudlari tajribasini o'rganish va ular yuzasidan ilmiy izlanishlar olib borgan holda O'zbekiston Respublikasi amaliyotiga ham joriy qilish yuzasidan takliflar ishlab chiqish tavsiya qilinadi.

Uchinchi paragraf bevosita O'zbekiston Respublikasi qonunchiligini TRIPS bitimi normalari bilan muvofiqlashtirish masalalariga bag'ishlangan bo'lib, bunda dissertant rivojlanayotgan davlatlardan biri sifatida bitimning o'zida nazarda tutilgan o'tish muddatlaridan foydalanish qonunchilikni uyg'unlashtirishdagi ba'zi ma'muriy, moliyaviy va texnik qiyinchiliklarni yengib o'tishda amaliy yordam beradi degan xulosaga keladi. Bundan tashqari, O'zbekiston Respublikasining milliy qonunchiligi JST TRIPS bitimiga uyg'unlashtirish bo'yicha takliflar bayon etilgan qiyosiy jadval tayyorlanib dissertatsiya ishiga ilova qilindi.

XULOSA

Ushbu ishda Jahon Savdo Tashkiloti doirasida intellektual mulk huquqlarining xalqaro-huquqiy tartibga solinishi, shuningdek O'zbekiston Respublikasining kelgusida JSTga kirishi asnosida milliy qonunchilikni ushbu tashkilotning intellektual mulk huquqlariga bag'ishlangan TRIPS bitimi normalari bilan uyg'unlashtirish istiqbollari tahlil qilish quyidagi nazariy xulosalar va amaliy tavsiyalar ishlab chiqish imkonini berdi.

I. Ilmiy-nazariy xulosalar:

1.1. Intellektual mulk huquqlarining xalqaro tartibga solinishi bugungi globallashtirish dunyoda tobora ko'proq xalqaro huquqqa asoslanmoqda degan xulosaga kelish mumkin. Bu borada olimlar va tadqiqotchilar fikrlarini o'rgangan holda, dissertant tomonidan ushbu tartibotni ta'riflash uchun “intellektual mulk huquqlarining

xalqaro muhofaza tizimi” tushunchasi tanlab olingan va unga mualliflik ta’rifi berilgan. Unga ko‘ra, intellektual mulk huquqlarining xalqaro muhofaza tizimi – xalqaro huquq subyektlari tomonidan ma’lum bir davlat hududida yaratilgan intellektual mulk obyektining davlat chegaralaridan tashqarida ham himoyasini ta’minlash uchun yaratilgan huquqiy vositalar (xalqaro shartnomalar, xalqaro va mintaqaviy mexanizmlar) majmuidir. Intellektual mulk huquqlari xalqaro huquq va milliy huquq nisbatlarida o‘rganildi hamda intellektual mulk huquqlarini xalqaro-huquqiy tartibga solishda “xalqaro huquq” va “milliy huquq” yondashuvlari bir-biriga ziddiyatli emas, balki bir-birini to‘ldiruvchi (komplimentar) yondashuvlar deb topildi.

1.2. XX asr oxiri va XXI asr davomida intellektual mulk huquqlarining rivojlanish tendensiyalari xalqaro savdo prizmasida kengroq yoritishga harakat qilindi. Bu davrga kelib umumiy intellektual mulk huquqlaridan ajralib chiqqan savdoga oid intellektual mulk huquqlarining xalqaro tartibga solinish evolyutsiyasi uch davrga bo‘lib o‘rganilib, har bir davrning o‘ziga xoslik jihatlari yoritib berildi. Shu bilan birga, “savdoga oid intellektual mulk huquqlari” tushunchasi quyidagicha mualliflik ta’rifi ishlab chiqildi: savdoga oid intellektual mulk huquqlari – davlat tomonidan ta’minlanmaganligi yoki lozim darajada ta’minlanmaganligi uchun savdo sanksiyalariga olib keluvchi, xalqaro savdo shartnomalari asosida tartibga solinadigan intellektual mulk obyektlariga bo‘lgan mulkiy huquqlar demakdir. Savdoga oid intellektual mulk huquqlarini ta’minlashda davlatlar mamlakatning ijtimoiy-iqtisodiy taraqqiyoti va huquq egalarining qonuniy manfaatlariga putur yetkazmagan holda tegishli qonunchilik normalarini ishlab chiqadilar.

1.3. Savdoga oid intellektual mulk huquqlari muhofazasining xalqaro-huquqiy asoslari 4 ta mezon (ishtirokchi davlatlarning soni, amal qilish doirasi, tartibga solish obyekti va qaysi tashkilot tomonidan nazorat qilinishiga ko‘ra) va savdoga oid intellektual mulk huquqlarini tartibga solishning xalqaro-huquqiy mexanizmlari 3 ta mezon (davlatlar a’ziligiga ko‘ra, a’zolarining geografik joylashuviga ko‘ra va faoliyat predmeti bo‘yicha) asosida tasniflab chiqildi.

1.4. Intellektual mulk huquqlari monopoliyaga qarshi kurash va nohalol savdo amaliyotlarining bir qismi sifatida o‘rganiladi hamda davlatning investitsiyaviy jozibadorligiga, uning tashqi savdo hamkori sifatida tanlanishiga va iqtisodiy o‘rishiga bevosita ta’sir ko‘rsatganligi sababli intellektual mulk huquqlari “savdo bilan bog‘liq” ekanligi asoslab berildi.

1.5. BIMT shartnomalari va TRIPS bitimi o‘zaro taqqoslanib, BIMT konvensiyalari asosan, alohida holatda ma’lum bir intellektual mulk obyekti bilan bog‘liq qoidalarni jamlaydi, TRIPS esa intellektual mulkning bitimning 2-bobida sanalgan 7ta obyekti bo‘yicha minimal standartlarni jamlaydigan intellektual mulk huquqlarining o‘ziga xos kodifikatsiyasi degan xulosaga kelindi. Shunga qaramay, ushbu bitim internetda intellektual mulk huquqlarini himoya qilish, shu bilan birga, an’anaviy bilimlar, genetik resurslar hamda biotexnologik innovatsiyalarni o‘zida qamrab olishi zarur deb xulosa qilindi.

II. Intellektual mulk huquqlarining xalqaro-huquqiy tartibga solishini takomillashtirish va O‘zbekiston Respublikasining JSTga a’zoliqi oldidan milliy

qonunchilikni TRIPS bitimi normalari bilan muvofiqlashtirish bo'yicha amaliy tavsiyalar:

2.1. 1995-yil 22-dekabrdagi BIMT va JST o'rtasidagi amaldagi hamkorlik to'g'risidagi Bitim tashkilotlar o'rtasidagi yangi shakllanib kelayotgan masalalar (raqamli kontent, iqlim o'zgarishi, intellektual mulk va aholi salomatligi, biotexnologiyalar rivoji, texnologiyalar transferi) yuzasidan BIMT shartnomalarining TRIPS bitimiga ta'siri va, aksincha, TRIPSning BIMT shartnomalarga ta'siri bo'yicha hamda bu masalalarda BIMT va JST o'rtasidagi vakolatlar munosabatlariga oid yangi shartnoma bilan almashtirilsa maqsadga muvofiq bo'lar edi.

2.2. TRIPS Kengashi tarkibida muayyan intellektual mulk obyekti bo'yicha ish olib boruvchi alohida qo'mitalar tashkil etish tavsiya etiladi, bu uning tashkiliy jihatdan GATT Kengashiga o'xshab har bir savdo shartnomasi bo'yicha alohida qo'mitalar asosida ishlashiga imkon beradi va ish samaradorligini oshiradi.

2.3. O'zbekiston Respublikasi Prezidentining 2023-yil 2-iyundagi PQ-181-son qaroriga 2-ilova sifatida keltirilgan "Jahon savdo tashkiloti bilan ishlash bo'yicha muzokaralar guruhi" oldiga JST tomonidan tashkilotga a'zo bo'lish jarayonida mamlakatlarga bosqichma-bosqich tarzda JST doirasidagi majburiyatlariga rioya etilishini ta'minlash maqsadida mamlakat qonunchiligiga tegishli o'zgartirish va qo'shimchalarni kiritib borish maqsadida taqdim etiladigan o'tish davri muddatlarini belgilashga erishish maqsadga muvofiqdir. Xususan, TRIPS bitimi 65-moddasi 3-bandiga muvofiq, JSTning markaziy rejalashtirilgan iqtisodiyotdan erkin bozor iqtisodiyotiga o'tish jarayonidagi a'zo davlat intellektual mulk tizimi islohotini amalga oshirishda sohaga oid normativ-huquqiy hujjatlarni qabul qilishga doir muammolarni bartaraf etish uchun taqdim etiladigan o'tish davri muddatidan foydalanish huquqi kafolatlangan. O'zbekiston uchun ham a'zo bo'lish jarayonidagi muzokaralarda o'tish davri muddatidan foydalanish maqsadga muvofiq, chunki, mamlakatimizda intellektual mulk egalarining mulkiy huquqlarini buzganlik uchun jinoiy javobgarlikni joriy etish, bojxona organlariga ex officio prinsipi asosida ishlash hamda kontrafakt mahsulotlar, materiallar va ishlab chiqarish asboblarni olib qo'yish va yo'q qilish imkoniyatini taqdim etish, parallel importni tartibga solish vaqt talab etadigan jarayondir.

2.4. Jahon savdo tashkiloti bilan ishlash bo'yicha muzokaralar guruhi tomonidan O'zbekiston Respublikasining TRIPS bitimi bilan parallel ravishda 2001-yilda qabul qilingan "Intellektual mulkning savdoga oid jihatlari bo'yicha bitim va jamiyat salomatligi to'g'risida"gi Doha deklaratsiyasi ishtirokchisiga aylanishini ham ta'minlash maqsadga muvofiqdir. Zero, hech qaysi davlat Covid-19 kabi pandemiyalardan himoya qilinmagan. Deklaratsiya qoidalarida, turli fors-major va epidemiyalar sharoitida tashkilotga a'zo bo'lgan rivojlanayotgan va iqtisodiyoti taraqqiy etmagan mamlakatlarga patent bilan muhofaza qilinadigan tibbiyot mahsulotlaridan majburiy litsenziya asosida foydalanish nazarda tutilgan.

2.5. O'zbekiston Respublikasi ham rivojlanayotgan davlat sifatida rivojlanayotgan davlatlarning bitimni milliy qonunchilikka tatbiq etish borasidagi tajribalarini o'rgangan holda o'zi uchun eng optimal implementatsiya mezonlarini tanlab olishi kerak. Bunda milliy huquqiy tizimimiz va amaliyotimiz, shuningdek

mamlakatimizning ijtimoiy-iqtisodiy farovonligi va texnologik taraqqiyoti uchun xizmat qiluvchi jamoat manfaatlari ham inobatga olinishi zarur.

2.6. O‘zbekiston Respublikasi Adliya vazirligi Intellektual mulk departamenti huzurida JST-TRIPS bo‘yicha tadbirkorlarga *pro bono* konsultatsiya markazlarini tashkil etish orqali, ularning tadbirkorlik faoliyatidagi intellektual mulk huquqlarini JST normalarini muvofiqligi bo‘yicha maslahatlar berib borish faoliyatini yo‘lga qo‘yish TRIPS bitimi huquqni qo‘llash amaliyoti bo‘yicha keltirilgan normalarni samarali tadbiq etishga bevosita ko‘maklashadi.

III. Milliy qonunchilikni JSTning TRIPS bitimi bilan muvofiqlashtirish yuzasidan qonunchilikka oid taklif va tavsiyalar:

3.1. Intellektual mulk huquqlari muhofazasi bo‘yicha umumiy va maxsus qonun hujjatlari normalarini o‘zaro muvofiqlashtirish, ulardagi ba’zi kollizion normalarni muvofiqlashtirish tavsiya etiladi. Xususan, umumiy norma sifatida O‘zbekiston Respublikasi Fuqarolik kodeksi 1031-moddasi 1-qismida keltirilgan intellektual mulk obyektlariga geografik ko‘rsatgichlar, integral mikrosxemalar topologiyalari va tijorat siri kabi obyektlarni ushbu modda matniga kiritish va bu bo‘yicha sudlarga tushuntirish berish maqsadga muvofiq.

3.2. Rejim masalasi. TRIPS bitimning 3(milliy rejim) va 4(eng qulay rejim)-moddalaridagi bandlar intellektual mulk sohasidagi milliy qonunlarimizning har biriga yoki O‘zbekiston Respublikasi Fuqarolik kodeksi 1032-moddasi (Intellektual mulk obyektlarini huquqiy muhofaza qilish)ga kiritish tavsiya etiladi.

3.3. Parallel import. TRIPS bitimining 6-moddasida ko‘zda tutilgan va Doha deklaratsiyasining 5(d)-bandida mustahkamlangan huquqlar tugashi tartibi (Исчерпание прав) bo‘yicha Fuqarolik kodeksining 1107¹-moddasi va “Tovar belgilari, xizmat ko‘rsatish belgilari va tovar kelib chiqqan joy nomlari to‘g‘risida”gi O‘zbekiston Respublikasi Qonunining 26-moddasi moddalar matni xalqaro huquqlar tugashi tartibini nazarda tutadi deyish mumkin. Bojxona kodeksiga “Parallel import” tushunchasini kiritish va huquqni qo‘llash amaliyotiga xalqaro huquqlar tugashi tartibini joriy etish tavsiya etiladi.

3.4. Texnologiyalar transferi. TRIPS bitimi 7-moddasi mazmunidagi “texnologiyalar transferi” bilan bog‘liq maqsad bitimning 40, 66 va TRIPS bitimiga biriktirilgan ilovada keltirilgan bo‘lib, Intellektual mulk huquqlari muhofazasi texnologiyalar transferiga xizmat qilishi lozimligi belgilangan. Bundan kelib chiqib, O‘zbekiston Respublikasi qonunchiligiga ham, ayniqsa maxsus qonunlarga, qonun hujjatining ushbu maqsadga xizmat qilishi bilan bog‘liq band kiritilishi maqsadga muvofiq. Shu bilan birga, intellektual mulk qonunchiligi bo‘yicha umumiy norma (bizning holatimizda Fuqarolik kodeksi) hamda O‘zbekiston Respublikasi Prezidentining 2022-yil 26-apreldagi PQ-221-son qaroriga ilova qilingan 2022-2026-yillarda O‘zbekiston Respublikasida intellektual mulk sohasini rivojlantirish strategiyasida “texnologiyalar transferi” tushunchasiga ta’rif kiritilishi maqsadga muvofiq.

3.5. Mutlaq huquqlarni kengaytirish. TRIPSning 14-moddasi 1 va 2-qismi asosida “Mualliflik va turdosh huquqlar to‘g‘risida”gi qonunning 47-moddasi (Ijrochining huquqlari) 2-qismi 5-bandi va 50-moddasi (Fonogramma

tayyorlovchilarning huquqlari) 2-qismi ma'lum harakatlarni amalga oshirish yoki bunday harakatlarga ruxsat berish bilan bog'liq mutlaq huquqlar "ta'qiqlash" bilan bog'liq qoidalar bilan to'ldirishi tavsiya etiladi. Xuddi shu tarzda, TRIPS bitimining 16-moddasi 1-qismi bilan muvofiqlikda, "Tovar belgilari, xizmat ko'rsatish belgilari va tovar kelib chiqqan joy nomlari to'g'risida"gi Qonuni 26-moddasining 1-qismidagi tovar belgisi egasiga ushbu tovar belgisidan foydalanish va tasarruf etishdan tashqari, uni uchinchi shaxslarning noqonuniy foydalanishini ta'qiqlash huquqini ham mutlaq huquqlar sirasiga qo'shish taklif etiladi.

3.6. Intellektual mulkka oid ishlarni ko'rishda sudlar tomonidan qonunchilikni to'g'ri va bir xilda qo'llanilishini ta'minlash maqsadida sudlarga qonunchiligimizda intellektual mulk egalarining mulkiy huquqlari qamrovi bo'yicha tushuntirishlar ishlab chiqish tavsiya etiladi. Shu bilan bir qatorda, O'zbekiston Respublikasi Oliy sudida intellektual mulk borasidagi nizolarga ixtisoslashgan sudlov hay'atini tashkil etish maqsadga muvofiq.

3.7. Hammaga ma'lum tovar belgilari. "Tovar belgilari, xizmat ko'rsatish belgilari va tovar kelib chiqqan joy nomlari to'g'risida"gi Qonunining 32¹-moddasi TRIPS bitimining 16-moddasi 2-qismi asosida tovar belgisi hammaga ma'lum tovar belgisi sifatida e'tirof etilishi uchun zarur mezonlar to'la ko'rsatilishi tavsiya qilinadi.

3.8. Patentga layoqatli obyektlar. Mikroorganizmlar, biologik bo'lmagan va mikrobiologik jarayonlar TRIPS bitimining 27.3(b)-moddasiga muvofiq, majburiy patentlashtirilishi kerak. "Ixtirolar, foydali modellar va sanoat namunalari to'g'risida"gi qonunning 6-moddasidagi patentga layoqatli obyektlar qatori biologik bo'lmagan va mikrobiologik jarayonlar bilan to'ldirilishi lozim.

3.9. Majburiy litsenziyalash bo'yicha. "Ixtirolar, foydali modellar va sanoat namunalari to'g'risida"gi qonunda keltirilgan sanoat mulki obyektidan patent egasining roziligisiz mutanosib miqdorda unga tovon to'lagan holda foydalanilishiga ruxsat berish bilan bog'liq hamda majburiy nomutlaq litsenziyalar berish tartib-taomillarini TRIPSning 31(bis)-moddasi va TRIPS bitimga ilovada keltirilgan farmasevtika mahsulotlarini majburiy litsenziyalash "tizim"iga muvofiqlashtirish tavsiya etiladi (bitim ilovasining 3 va 4-qismlari).

3.10. Jinoyiy sanksiyalar. Jinoyat kodeksining 149-moddasi barcha intellektual mulk obyektlariga nisbatan jinoiy himoya vositalarini va jinoyatlarni aniq belgilash kerakligini inobatga olib qo'shimchalar kiritilishi tavsiya etiladi.

3.11. Bojxona nazorati. Bojxona kodeksi 383-moddasi(Bojxona organlari tomonidan intellektual mulk obyektlariga bo'lgan huquqlarni himoya qilish bo'yicha choralar ko'rilmaydigan tovarlar) qayta ko'rib chiqilishi va bojxona organlariga taxmin qilinayotgan huquqbuzarlikka qarshi ex officio harakatini joriy etish (huquq egasining arizasidan qat'i nazar o'z tashabbusiga ko'ra tovarni chiqib ketishini to'xtatib turish chorasini qo'llash vakolatini berish) taklif etiladi.

3.12. Bitimning 73b(III)-moddasiga muvofiq tarzda, O'zbekiston Respublikasining "O'zbekiston Respublikasining xalqaro shartnomalari to'g'risida"gi qonuni 40-moddasiga pandemiya yoki boshqa oldindan ko'rilmagan holatlarda O'zbekiston Respublikasi xalqaro shartnomasining amal qilishini to'xtatib turish bo'yicha qoidani kiritilishi, fikrimizcha, qonunchilikdagi aniqlikka olib keladi.

**SCIENTIFIC COUNCIL No. DSc.07/03.06.2023. Yu.22.04 FOR AWARDING
THE SCIENTIFIC DEGREES AT TASHKENT STATE UNIVERSITY OF
LAW**

TASHKENT STATE LAW OF UNIVERSITY

ALMOSOVA SHAHNOZA SOBIROVNA

**INTERNATIONAL LEGAL REGULATION OF INTELLECTUAL
PROPERTY RIGHTS IN THE FRAMEWORK OF THE WORLD TRADE
ORGANIZATION**

12.00.10 – International law

**ABSTRACT
of doctoral (PhD) dissertation on legal sciences**

Tashkent – 2024

The theme topic of the doctoral dissertation (PhD) was registered at the Supreme Attestation Commission under Ministry of higher education, science and innovations of the Republic of Uzbekistan number № B2023.4.PhD/Yu1259.

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The abstract of the dissertation is posted in three languages (Uzbek, English, Russian (summary)) on the website of the Scientific Council (<https://tsul.uz/uz/fan/avtoreferatlar>) and the Information educational portal «ZiyoNet» (www.ziyo.net).

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The defense of the dissertation will be held on August 1, 2024 year at 11:00 at the Session of the Scientific Council No. DSc.07/03.06.2023.Yu.22.04 at Tashkent State University of Law (Address: 100047, Sayilgokh street., 35. Tashkent city. Phone: (99871) 233-66-36; Fax: (99871) 233-37-48, e-mail: info@tsul.uz).

The doctoral dissertation is available at the Information Resource Center of Tashkent State University of Law (registered as no. 1274). (Address: 13 Amir Temura street, 100047. Tashkent city. Phone: (998) 71-233-66-36)

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INTRODUCTION (abstract of PhD thesis)

Relevance and necessity of the dissertation topic. With the development of artificial intelligence and digital technologies in the world, and the increasing number of new trademarks, service marks and innovations in all fields, the commercial importance of intellectual property rights is becoming greater day by day. The protection of these rights is included in the framework of the World Trade Organization, which has 166 member states and controls 98% of world trade⁸, at the same time, today there are nearly 3,000 bilateral investment treaties⁹ and 371 regional trade agreements¹⁰ in force, which increasingly include clauses related to intellectual property, that all requires the further improvement of the international legal framework of intellectual property rights protection in international trade relations.

In the world, countries are paying special attention to the improvement of the international legal system of intellectual property rights protection and to scientific studies on the comprehensive analysis of the trends of penetration of these rights into international trade relations. Certain results were achieved in the system of trade-related intellectual property rights protection, in particular, in Goal 9.5 of the Sustainable Development Goals of the United Nations¹¹ was defined a goal to encourage innovation and increasing research and experimental development as one of the main directions and the adoption of the Doha Declaration of 2001 allowed a certain level of balance between intellectual property and public health. Nevertheless, modern conditions require a comprehensive study of the theoretical, practical and legal problems of this system. Especially the emerging issues in this regard, the relationship between intellectual property and public health, biotechnology, technology transfer, artificial intelligence make it urgent to cover these issues within the scope of the World Trade Organization comparable to the United Nations Organization in terms of organizational importance in regulating world trade.

Achieving WTO membership remains one of the main directions of the foreign economic policy of the Republic of Uzbekistan. On September 19, 2023, at the 78th session of the UN General Assembly, the president of the country emphasized full membership in the World Trade Organization as a priority task for the liberalization of our economy¹². The 93rd goal of the Decree of the President of the Republic of Uzbekistan “On the Strategy of Uzbekistan-2030” is devoted to harmonizing national legislation and law enforcement practices with the rules, norms and agreements of the World Trade Organization. In this regard, issues of harmonizing the legislation of Uzbekistan with the provisions of the main agreements of the WTO, including the norms of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) is gaining urgent importance. The harmonization of our legislation with world standards is very important not only for the republic's integration into large financial organizations, but also for creating an optimal protection regime in the time

⁸ Who we are: https://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm

⁹ Investment Policy Hub: <https://investmentpolicy.unctad.org/international-investment-agreements>

¹⁰ Regional Trade Agreements Database: <http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>

¹¹ The Global Goals. Goal 9: <https://www.globalgoals.org/goals/9-industry-innovation-and-infrastructure/>

¹² Speech of the President of the Republic of Uzbekistan Sh. Mirziyoyev at the 78th session of the UN General Assembly. <https://president.uz/oz/lists/view/6679>

when according to the information provided by the Competition Committee of the Republic of Uzbekistan, the number of complaints about unfair competition in our country has increased by 7 times over the last years¹³.

This dissertation research serves to a certain extent in the implementation of tasks defined in Decrees of the President of the Republic of Uzbekistan “On the development strategy of New Uzbekistan for 2022-2026” dated January 28, 2022 and “On “Uzbekistan-2030” strategy” dated September 11, 2023, and Decisions of the President of the Republic of Uzbekistan “On additional measures for the further development of the intellectual property sector” of January 28, 2021, “On measures to improve the system of protection of intellectual property objects” of April 26, 2022, “On additional measures to accelerate the process of membership of the World Trade Organization of the Republic of Uzbekistan” of June 2, 2023 and in other legal documents related to the topic.

Compliance of the research with the main priorities of the republic's science and technology development. Dissertation research is done in accordance with the priority direction of the republic’s science and technology development I. “Formation of a system of innovative ideas and ways of their implementation in the social, legal, economic, cultural, spiritual and educational development of the information society and the democratic state”.

Level of study of the problem. During the years of independence, a number of our scientists conducted a lot of research on intellectual property rights. It should be noted that various aspects of the research topic have been studied in different areas of jurisprudence. In particular, civil-legal regulation of intellectual property objects, issues of commercialization and some aspects of handling disputes related to restoring these rights in courts were researched by national legal scholars Kh.Rakhmonkulov, O. Okyulov, Sh.Shorakhmetov, B.Toshev, N.Imomov, Z.Akramkhodjayeva, S.Safoeva, I.Rustambekov and others, however, the international standards in this field, especially the issues of harmonization of national legislation with international standards have not been studied enough.

B. Toshev researched international legal acts and international legal norms in this field within the scope of the topic of the legal status of copyright acts of international organizations.

Scientists such as Kh.Islamkhodjaev, Z.Kamilova, Sh.Shodikhodjaev, U.Yakubkhodjayev, R.Azkhodjayeva, S.Usmanova conducted research on various directions of the WTO organization, namely Kh.Islamkhodjaev discussed the organizational and legal aspects of Uzbekistan’s accession to the WTO, Z.Kamilova discussed innovative integration procedures within WTO international cooperation, Sh.Shodikhodjaev discussed issues of dispute settlement between the WTO and developing countries, U.Yakubkhodjayev discussed the legal architecture of the WTO and its asymmetries, R. Azkhodjayeva researched issues of international legal regulation of health care within the WTO. At the same time, Z. Ubaidullaev, B. Toshev, A. Kamarov studied some aspects of international trade law. A. Yuldashov has conducted extensive research on various aspects of the research topic in his scientific

¹³ <https://uzreport.news/analytics/zashita-intellektualnoy-sobstvennosti-v-uzbekistane-problemi-i-puti-ih-resheniya>

work. Although there are certain scientific developments on research topic, we can see that a single monographic study on the international legal regulation of intellectual property rights in the framework of the WTO has not been conducted.

The topic of research is covered in the scientific works of scientists from the CIS countries, including D. Dvornikov, A. Azarov, Yu. Matveyev, N. Karpova, V. Shumilov, A. Tsepov, as well as certain chapters of scholarly works of K. Remchukov, I. Dumulen, I. Sergeev are devoted to trade aspects of intellectual property or its protection within WTO.

In addition, during the research, a large number of Western scientists, for example, W. den Bosch, C. Deere, Carlos M. Correa, J. Malbon, Ch. Lawson, D. Matthews, F. Abbot, K. Scientific works of Peter, M. Mina, M. Carlos, H. Jackson, T. Cottier, E. Solovy, P. Krishnamurthy, Grosse Ruse-Khan¹⁴ were referred to.

Connection of the dissertation research with the research plans of the higher educational institution where the dissertation was completed. The topic of the dissertation was carried out within the priority directions of scientific research on the topic “Problems of harmonization of national legislation with the agreements, rules and norms of the World Trade Organization” in the scientific research plan of Tashkent State University of Law.

The purpose of the study is to develop scientifically based proposals and recommendations for the protection of trade-related intellectual property rights in the framework of the WTO, the harmonization of the legislation of the Republic of Uzbekistan with the norms of the TRIPS agreement and the improvement of international and national mechanisms for the protection of intellectual property rights.

Tasks of the research:

comprehensively studying theoretical issues of international legal regulation of trade-related intellectual property rights;

researching universal and regional international agreements on the protection of trade-related intellectual property rights;

researching and classifying institutional frameworks for international legal regulation of trade-related intellectual property rights;

researching the legal basis of protection of intellectual property rights in the framework of the WTO;

reviewing the institutional mechanism of protection of intellectual property rights in the framework of the WTO;

analysing the international legal obligations of the WTO member states on the application of the norms of the TRIPS Agreement;

conducting comparative legal analysis of the implication of the TRIPS agreement to the practice of foreign countries, including the legal practice of the People’s Republic of China, the Russian Federation and the countries of Central Asia;

studying the issues of harmonization of the legislation of the Republic of Uzbekistan with the norms of the WTO governing intellectual property rights, preparing proposals and recommendations for bringing national legislation into line with the provisions of TRIPS agreement;

¹⁴ These and other sources are listed in the bibliography of the dissertation work.

The object of the research is the system of international legal relations related to the regulation of intellectual property rights in the framework of the WTO.

The subject of the research is universal and regional international agreements and mechanisms that regulate trade-related intellectual property rights at the international level, issues of trade-related intellectual property rights regulation in the framework of the WTO, the practice of law enforcement, the practice of foreign countries and issues of harmonization of the legislation of the Republic of Uzbekistan with the norms of the WTO governing intellectual property rights.

Research methods. Methods such as comparative-legal research, comprehensive research of historical and scientific sources, logical analysis, generalization, systematic approach, empirical research and analysis of case law were used in the research.

Scientific novelty of the research is as follows:

it is justified that the word “reputation” should be used in harmonizing the definition of “geographical indication” in the Law “On Geographical Indications” of the Republic of Uzbekistan with the definition of “geographical indication” in the context of the TRIPS Agreement;

it is justified that there is a need to implement into the legislation of the Republic of Uzbekistan the procedures for issuing compulsory non-exclusive licenses relating permitting the use of industrial property object without the consent of the patent owner with a proportionate amount of compensation, which is stipulated in TRIPS Agreement;

it is justified that it is necessary to allow in the Republic of Uzbekistan to use the objects of industrial property protected by patents provided that the patent owner is notified and paid a proportional amount of compensation in the case of natural disasters, accidents, epidemics and other emergency situations;

it is justified that there is a need to introduce the norm with the meaning that the judicial authorities shall have the authority to give the defendant the obligation of proving that the process to obtain an identical product is different from the patented process which is stipulated in TRIPS Agreement.

it is justified that a norm related to the prohibition of non-disclosure and non use of confidential information for commercial purposes without the consent of the applicant, that is in documents submitted to government bodies for state registration of medicines containing new chemicals, should be included in the national legislation of the Republic of Uzbekistan.

The practical results of the research are as follows:

the need to revise the Agreement on cooperation between the WTO and the WTO of December 22, 1995 is justified;

the need to establish separate committees within the TRIPS Council working on a specific intellectual property object is justified;

it is justified that transitional periods which will be presented to introduce relevant amendments and additions to the country’s legislation should be achieved in order to ensure that the Republic of Uzbekistan complies with its obligations under the WTO;

it is justified that the negotiating team on working with the World Trade Organization feasibly provide the Republic of Uzbekistan’s participation in the “Doha

Declaration on the TRIPS Agreement and Public Health” adopted in 2001 in parallel with the TRIPS Agreement;

the need to study the experiences of developing countries in implementing the TRIPS agreement into national legislation and applying it in the Republic of Uzbekistan is justified;

the need to establish pro bono WTO-TRIPS consultation centers for entrepreneurs is justified;

the need to harmonize the national legislation of the Republic of Uzbekistan with the TRIPS agreement of the WTO is justified.

Reliability of research results. Theoretical data, international law and national legal norms, law enforcement practice, statistical data and judicial practice materials used in the research work are obtained from official sources, foreign experience and national legal documents are mutually analyzed, research results have been published in prestigious national and foreign publications, implementation of the developed proposals and recommendations is confirmed by the competent structures.

The scientific and practical significance of the research results. The scientific significance of the research is determined by the relevance of the problems considered in the dissertation, the level of justification of the conclusions and proposals. The scientific conclusions obtained as a result of this research can be used in scientific-research activities, in the scientific-theoretical enrichment of educational courses such as “WTO Law”, “Dispute Settlement within the WTO”, “Intellectual Property Law”, “International Intellectual Property Law”, in conducting lectures, practical exercises and trainings, in preparing educational and methodological manuals.

The practical importance of the research work is that the conclusions made by the researcher can be used in law-making activities, in the preparation of normative legal documents, their amendments and additions, including in the improvement of legal norms and law enforcement practices in the field of intellectual property, in finding a reasonable ratio of regulatory measures by the state in this field.

Implementation of the research results. The results of the study were used in the following:

the proposal on using the word “reputation” in the definition of “geographical indication” in the Law "On Geographical Indications" of the Republic of Uzbekistan in harmonizing with the definition of “geographical indication” in the context of the TRIPS Agreement was accepted in the formulation of Article 3 of the Law “On Geographical Indications” (Act of the Committee on Judiciary and Combating Corruption of the Senate Oliy Majlis of the Republic of Uzbekistan of April 15, 2022 No. 10). This proposal served to clarify the distinction between the terms “appellation of origin” and “geographical indication” in the national legislation of the Republic of Uzbekistan;

the proposal on implementing the procedures and norms of compulsory licensing relating the permission to use an industrial property object without the consent of the patent owner with compensation in a proportionate amount that given in Article 31(bis) of TRIPS Agreement and Annex to the Agreement was used in the formation of Part 2 of Article 1 of the Law of the Republic of Uzbekistan “On Amendments and Additions

to some legislative acts of the Republic of Uzbekistan in connection with the harmonization of the national legislation of the Republic of Uzbekistan with the agreements of the World Trade Organization” in the development of the Article 11¹ of the Law of the Republic of Uzbekistan “On inventions, utility models and industrial designs” (Act of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan dated March 6, 2024 No. 02/4-61). This served to harmonize the legal framework and practice related to the use of an object of industrial property without the consent of the patent owner in the Republic of Uzbekistan with the norms of the WTO TRIPS agreement;

the proposal to permit the use of industrial property objects protected by patents in case of natural disasters, catastrophes, epidemics and other emergency circumstances with notification of the patent holder and payment of commensurate compensation to the patent owner was used in the formation of Part 3 of Article 1 of the Law of the Republic of Uzbekistan “On Amendments and Additions to some legislative acts of the Republic of Uzbekistan in connection with the harmonization of the national legislation of the Republic of Uzbekistan with the agreements of the World Trade Organization” (Act of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan dated March 6, 2024 No. 02/4-61). It served to protect patent owners' economic interests arising from patents while allowing governments to limit patent rights in emergency situations.

the proposal to harmonize the second part of Article 30 of the Law of the Republic of Uzbekistan “On inventions, utility models and industrial designs” with Article 34 of the TRIPS Agreement adding the clause “if the product obtained by the patented method is new, in the absence of evidence to the contrary, it is considered that the identical product was obtained by using the patented method, in which case the defendant may be charged by the court with the obligation to prove that the method of obtaining such a product differs from the patented method” was used in the formation of Part 3 of Article 1 of the Law of the Republic of Uzbekistan “On Amendments and Additions to some legislative acts of the Republic of Uzbekistan in connection with the harmonization of the national legislation of the Republic of Uzbekistan with the agreements of the World Trade Organization” (Act of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan dated March 6, 2024 No. 02/4-61). This served to improve the norms on proving in cases of violations of intellectual property rights in relation to a method the legislation of the Republic of Uzbekistan.

the proposal to prohibit the disclosure and non use of confidential information for commercial purposes without the consent of the applicant, that is contained in registration documents submitted to government bodies for state registration of medicines containing new chemicals, was used in the formation of Article 4 of the Law of the Republic of Uzbekistan the Law “On amendments and additions to some laws of the Republic of Uzbekistan in connection with harmonization of the national legislation of the Republic of Uzbekistan with the World Trade Organization” (Act of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan dated March 6, 2024 No. 02/4-61). This served to increase the legal protection of undisclosed information in our national legislation.

The aprobation of research results. The results of the research were discussed at 4 scientific and practical conferences, including 2 international and 2 national scientific and practical conferences.

The publication of research results. A total of 17 scientific works, including 1 monograph, 13 scientific articles (3 in foreign journals) were published on the subject of the dissertation.

The structure and volume of the dissertation. The dissertation consists of an introduction, three chapters, a list of literature, a conclusion, annexes. The volume of the dissertation is 142 pages (except the part of the list of references used).

MAIN CONTENT OF THE DISSERTATION

In the **introduction** part of the dissertation, the relevance and necessity of the research topic is justified, the purpose and tasks, object and subject of the research are explained, as well as its connection with the main priorities of the republic's science and technology development is substantiated, national and foreign scientists and scientific research on the subject of the dissertation, i.e., the level of study of the problem, the connection of the topic with the research and development plan of the higher educational institutions where the dissertation is done, methods, scientific and practical importance are revealed. Also, information on the approval of the implementation of research results, published works and the volume of the dissertation is given.

In the first chapter of the dissertation entitled **“Theoretical and legal aspects of the regulation of intellectual property rights in international trade”**, the theoretical basis of the regulation of intellectual property rights at the international level, existing scientific theoretical concepts in this field, the contractual and legal bases of the international legal protection of trade-related intellectual property rights, universal and regional institutional mechanisms of intellectual property rights regulation are scientifically analyzed.

In the research work, the authorial definitions of the concepts of “trade-related intellectual property rights” and “international protection system of intellectual property rights” were developed by the researcher. Although the national legislation of the states is more determinant in the regulation of intellectual property rights, the general standards developed by the states serve as the basis of the national legislations in this regard. Recognizing the complex and multifaceted nature of international intellectual property rights, we focus mainly on the international legal regulation of intellectual property norms used by private individuals. In turn, it cannot be denied that, like other branches of national law, the protection of intellectual property rights is not limited in the borders of a single country and is increasingly gaining a transnational character. Thus, in today’s global environment, in the regulation of intellectual property rights, the approaches of “international law” and “national law” are not mutually exclusive, but complementary approaches.

The introduction of intellectual property into the field of international trade and the international recognition of the connection between them is a relatively new phenomenon. As the commercial value of intellectual property in international trade increases, the relationship between trade and intellectual property is becoming

stronger, thus, the focus on trade-related or trade-oriented intellectual property is increasing. It is theoretically a separate branch of intellectual property law, which reflects only the proprietary aspects of intellectual property rights, linking violations or inadequate enforcement of intellectual property norms by states to the system of trade sanctions. That's why, it is argued that intellectual property rights are "trade related" because they have a direct impact on the investment attractiveness of the state, its selection as a foreign trade partner, and economic growth in general.

The dissertation has conditionally divided the history of the formation of trade-related intellectual property rights into 3 periods, and the peculiarities for each period of the evolution of these rights have been highlighted. With the signing of the TRIPS Agreement in 1994, the commercial importance of intellectual property was officially recognized at the world level, and this led to the emergence of a regime based only on the trade-related aspects (commercial-proprietary aspects) of intellectual property, in contrast to the earlier regime under WIPO control, which focused on the protection of intellectual property rights in general. Today, this regime has become one of the important issues of bilateral and multilateral cooperation between countries, and intellectual property rights being a part of the national legal system, have become an integral part of international trade law and international investment law, which are considered areas of international law.

The connection between intellectual property and trade, which began to be recognized in the 1980s, had a significant impact on lawmaking process in the field of intellectual property. Intellectual property standards began to become an important part of interstate trade agreements, and the trade preferences specified in the agreements were determined on the state's intellectual property rights protection regime. In this way, the international legal framework covering trade-related intellectual property rights was created in the international regulation of intellectual property rights, and this process is still ongoing.

In modern trade relations, there is an inextricable connection between "tariff preferences" and the intellectual property rights protection regime. Multilateral and bilateral free trade (FTA), investment (BIT), preferential trade (PTA) agreements concluded by the states form the institutional and legal basis of this relationship. In particular, the TRIPS agreement reached within the WTO plays a central role in this regard.

In the process of research, international agreements on the protection of trade-related intellectual property rights are classified (according to the number of participating countries, the scope of application, the object of regulation, according to by which organization is administered) and, respectively, the classification of international institutional mechanisms (international organizations) is accomplished (according to the membership of the states, the geographical location of its members and according to the subject of activity).

The second chapter of the dissertation is devoted to the issues of "**The protection of intellectual property rights in the framework of the WTO**". In this chapter, the legal basis of trade-related intellectual property rights and the institutional mechanism of protection of these rights within the organization were analyzed.

The first paragraph of the second chapter is entitled “Legal bases of protection of intellectual property rights in the framework of the WTO” and it describes the legal nature of the TRIPS agreement and the agreements directly related to it.

In this paragraph, the debates go around the lack of full compatibility of the TRIPS agreement with the WTO system and the idea that intellectual property rights are a potential barrier to trade and thus can hinder the liberalization of trade. The dominant approach in the debates is that the enforcement of national intellectual property rights is an invisible barrier to market access. According to the researcher, the norm in the preamble of TRIPS that “measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade” and Article 7 of the agreement “in a manner conducive to social and economic welfare, and to a balance of rights and obligations” and the provisions providing for its application confirm its compatibility with the goal of general trade liberalization of the WTO.

In the paragraph, the dissertator considers the phenomenon of “TRIPS-plus” as a today’s potential external threat to trade within WTO. It is known that developed countries (especially the United States of America) use the dominant position in the market and apply “TRIPS-plus” norms in relation to developing countries. The dissertator emphasizes that it is impossible to completely ban the “TRIPS-plus” agreements or prevent their spread throughout the world without harming the freedom of countries to enter into bilateral agreements. The researcher believes that it is appropriate to reflect specific powers in the agreement between WTO and WIPO to fight against the “TRIPS-plus” norms, which hinder the ability of states to use the flexible norms of TRIPS.

At the same time, according to the researcher, it is necessary to reform the TRIPS agreement in the light of the development of digital technologies, including the protection of intellectual property rights on the Internet, while also covering traditional knowledge, genetic resources, and biotechnological innovations.

The second paragraph of the second chapter is called “Institutional mechanism of protection of intellectual property rights within the WTO”. The institutional mechanism for the protection of intellectual property rights within the WTO is administered by the TRIPS Council and the WTO Dispute Settlement Body (DSB). The TRIPS Council is the central body of the WTO responsible for administering and monitoring the implementation of the TRIPS Agreement, and its powers range from the implementation of the norms of the agreement to the national legislation of the member states to the international cooperation related to the intellectual property issues of the states. The WTO Dispute Settlement Body is a relatively new and effective tool for restoring rights to intellectual property objects. WTO DSB differs from the existing tools in that it is based on “hard law” norms of international law. The researcher justified that WTO DSB is a relatively more effective means of restoring rights to intellectual property objects compared to the WIPO Arbitration and Mediation Center, which deals with domestic and international commercial disputes of private individuals.

In addition, the dissertator assures that the TRIPS Council, like the GATT Council, should preferably be divided into separate committees that work on a specific object of intellectual property, this division will increase its efficiency.

The third chapter of the dissertation is devoted to **“The specific aspects of the application of WTO norms on trade-related intellectual property rights”** and examines the issues of harmonizing the legislation of the Republic of Uzbekistan with the norms regulating intellectual property rights in the WTO.

The first paragraph of the third chapter is called “International legal obligations of member states for the application of the TRIPS Agreement norms” and it reviews 4 groups of obligations related to the application of the TRIPS Agreement norms in domestic legislation and practice, to be exact, the obligations such as (1) civil and administrative procedures and remedies; 2) provisional measures; 3) special requirements related to border measures; 4) criminal procedures) are clarified.

In addition, each flexible provision of the Agreement was analyzed one by one, and a number of practical cases were studied through “case law”. In this regard, the views of scientists were discussed, and specific elements of the application of the Agreement in national legislation were studied. It was concluded that the use of the Agreement’s flexible norms by the states has not become a widespread practice as expected, due to the technical difficulties arising in this regard, the lack of national experts and the weakness of the relevant regulatory and legal framework. Flexible provisions of the Agreement related to parallel import (Article 6), general exceptions to patent rights (Articles 30 and 31) and compulsory licensing (Article 31(bis)) were analyzed through cases in the practice of the states.

In the second paragraph known as “A comparative-legal analysis of the legal practice of foreign countries on the application of the TRIPS Agreement (in the case of the People’s Republic of China, the Russian Federation and the countries of Central Asia)”, in this regard, foreign practice of the People’s Republic of China, the Russian Federation and Central Asian countries were selected by the researcher. As a result of the analysis, the dissertator summarizes the experience of the studied countries, illuminates commonalities and differences in the processes of implementation of the Agreement in mentioned countries, and develops recommendations for the practice of the Republic of Uzbekistan. In particular, it is recommended to conduct scientific research and develop proposals for their implementation in the practice of the Republic of Uzbekistan on the benefits of transitional periods of the Agreement, PRC’s experience on introducing the compulsory licensing in public health, and the experience of the RF and Central Asian countries on implementing the border measures and the experience of PRC and the RF on specialized IP courts.

The third paragraph is directly devoted to issues of coordination of the legislation of the Republic of Uzbekistan with the norms of the TRIPS Agreement. The researcher concludes that as one of the developing countries, Uzbekistan should use the transition periods provided for in the Agreement which will provide practical help in overcoming some administrative, financial and technical difficulties in harmonizing legislation. In addition, a comparative table containing proposals for harmonizing the national

legislation of the Republic of Uzbekistan with the WTO TRIPS Agreement was prepared and attached to the dissertation work.

CONCLUSION

In this work, the study of international legal regulation of intellectual property rights within the framework of the World Trade Organization, as well as the analysis of the perspectives of harmonizing the national legislation with the norms of the TRIPS Agreement prior to accession of the Republic of Uzbekistan to the organization made it possible to develop the following theoretical conclusions and practical recommendations.

I. Scientific-theoretical conclusions:

1.1. It can be concluded that the international regulation of intellectual property rights is increasingly based on international law in today's globalized world. Having studied the opinions of scientists in this regard, the researcher chose the concept of "international protection system of intellectual property rights" to describe the above and gave it an authorial definition. According to the researcher, **the international protection system of intellectual property rights** is a set of legal instruments (international treaties, international and regional mechanisms) created by the subjects of international law to ensure the protection of intellectual property outside the state borders even created in the territory of a certain state. Intellectual property rights were studied in correlation of international law and national law, and "international law" and "national law" approaches to the international legal regulation of intellectual property rights were found to be complementary rather than contradictory approaches.

1.2. At the end of the 20th century and during the 21st century, the development trends of intellectual property rights were tried to be covered more widely in the prism of international trade. By this time, the evolution of the international regulation of trade-related intellectual property rights separated from general intellectual property rights, was studied in three periods, and the specific aspects of each period were highlighted. At the same time, the concept of "trade-related intellectual property rights" was developed and explained as follows: trade-related intellectual property rights are property rights to intellectual property objects regulated on the basis of international trade agreements, leading to trade sanctions due violations or inadequate enforcement of intellectual property rules by states. In providing trade-related intellectual property rights, the states develop appropriate legal norms without harming the socio-economic development of the country and the legal interests of the right holders.

1.3. The international legal foundation (international agreements) for the protection of trade-related intellectual property rights is classified on 4 criteria (according to the number of participating states, the scope of application, the object of regulation and by which organization the agreement is administered) and the international legal mechanisms for the regulation of trade-related intellectual property rights are classified based on 3 criteria (according to the membership of the states, according to the geographical location of its members and according to the subject of activity).

1.4. Intellectual property rights are studied as part of antitrust and unfair trade practices, and it was justified that intellectual property rights are "related to trade"

because they have a direct impact on the investment attractiveness of the state, its selection as a foreign trade partner, and economic growth in general.

1.5. Comparing the WIPO agreements and the TRIPS Agreement, the researcher concludes that WIPO conventions mainly summarize the rules related to a specific object of intellectual property, while the TRIPS summarizes the minimum standards for the 7 objects of intellectual property listed in Chapter 2 of the Agreement. It was concluded that TRIPS Agreement is a unique codification of property rights. Nevertheless, this agreement should cover the protection of intellectual property rights on the Internet, as well as traditional knowledge, genetic resources and biotechnological innovations.

II. Practical recommendations on improving the international legal regulation of intellectual property rights and harmonizing national legislation with the norms of the TRIPS Agreement before the Republic of Uzbekistan's accession to the WTO:

2.1. It would be appropriate if the Agreement on cooperation between the WIPO and the WTO of December 22, 1995 were replaced by a new agreement covering emerging issues between the organizations (digital content, climate change, intellectual property and public health, biotechnology development, technology transfer) and the impact of the WIPO agreements on the TRIPS Agreement and, conversely, the impact of TRIPS on the WTO agreements and the relationship of competences between the WTO and the WIPO in these matters.

2.2. It is recommended to establish separate committees within the TRIPS Council, like GATT Council, that work on specific intellectual property objects working with separate committees for each trade agreement, which allows TRIPS Council to increase work efficiency.

2.3. It is recommended that transitional periods which will be presented to introduce relevant amendments and additions to the country's legislation should be achieved by "Negotiation group on working with the World Trade Organization" in order to ensure that the Republic of Uzbekistan can comply with its obligations under the WTO. In accordance with paragraph 3 of Article 65 of the TRIPS Agreement, the transitional period is provided for states that are in the process of transition from a centrally planned economy to a free market economy to eliminate problems related to the adoption of regulatory legal documents during the implementation of the Agreement. According to the researcher, Uzbekistan needs transitional period to introduce criminal liability for the violation of the intellectual property rights, implement the norms relating parallel imports and the ex officio principle for customs authorities so that they can work with counterfeit products, materials and confiscate and destroy their devices.

2.4. The researcher substantiates that the negotiating team on working with the World Trade Organization feasibly provide the Republic of Uzbekistan's participation in the "Doha Declaration on the TRIPS Agreement and Public Health" adopted in 2001 in parallel with the TRIPS Agreement. After all, no country is guaranteed against pandemics like Covid-19. In the Declaration, under the conditions of various force

majeure and epidemics, developing and less developed member states are provided for a right to issue compulsory licenses to use medical products protected by patents.

2.5. The Republic of Uzbekistan, as a developing country, should choose the most optimal implementation criteria for itself, having studied the experiences of developing countries in implementing the Agreement into national legislation. In this regard, it is necessary to take into account our national legal system and practice, as well as public interests that serve the socio-economic well-being and technological development of our country.

2.6. Establishing WTO-TRIPS pro bono consultation centers for entrepreneurs under the Department of Intellectual Property of the Ministry of Justice of the Republic of Uzbekistan, which provides advice on the compliance of intellectual property rights in their business activities with WTO TRIPS Agreement norms, will directly contribute to the effective implementation of the norms of law enforcement practice.

III. Legislative proposals and recommendations on the harmonization of national legislation with the TRIPS Agreement:

3.1. It is recommended to coordinate the norms of general and special laws on the protection of intellectual property rights, and to harmonize some conflicting norms in them. In particular, as a general norm, it is appropriate to expand the list of the objects of intellectual property in Part 1 of Article 1031 of the Civil Code of the Republic of Uzbekistan with objects such as geographical indicator, topography of integrated circuits, and trade secret, and to give an explanation to the courts about it.

3.2. Regime issue. Articles 3 (national regime) and 4 (most favorable regime) of the TRIPS Agreement are recommended to be included in each of our national laws in the field of intellectual property or in Article 1032 (Legal protection of intellectual property objects) of the Civil Code of the Republic of Uzbekistan.

3.3. Parallel import. It can be said that Article 1107¹ of the Civil Code and Article 26 of the Law of the Republic of Uzbekistan “On Trademarks, Service Marks and Appellation of Origin” provides international exhaustion regime, which is set in Article 6 of the TRIPS Agreement and in Paragraph 5(d) of the Doha Declaration. Thus, it is recommended to include the concept of “Parallel import” in the Customs Code of the Republic of Uzbekistan and to strengthen the procedure for “international exhaustion” in the practice of law enforcement.

3.4. Technology transfer. The objective of “transfer of technologies” stated in the Article 7 of the TRIPS Agreement is stipulated in Articles 40, 66 and the annex attached to the Agreement, and it is determined that the protection of intellectual property rights should serve the transfer of technologies. Based on this, it is appropriate to include in the legislation of the Republic of Uzbekistan, especially special laws, a clause meaning that the legal document serves this purpose. At the same time, it is appropriate to include a definition of the concept of “technology transfer” in the general norm on intellectual property (in our case, the Civil Code) and in the “Strategy for the development of the intellectual property sector in the Republic of Uzbekistan in 2022-2026” attached to the decision of the President of the Republic of Uzbekistan No.221 dated April 26, 2022.

3.5. Extension of absolute rights. It is recommended that the absolute rights related to the implementation of certain actions or the authorization of such actions should be supplemented with a right of “prohibition” in Clause 5, Part 2 of Article 47 (Performer’s Rights) and Part 2 of Article 50 (Rights of Phonogram Producers) of the Law “On Copyright and Related Rights” basing on Part 1 and Part 2 of Article 14 of TRIPS Agreement. In the same way, in accordance with Part 1 of Article 16 of the TRIPS Agreement, Part 1 of Article 26 of the Law “On Trademarks, Service Marks and Apellations of Origin” must provide the right to prohibit illegal use by third parties among the absolute rights.

3.6. In order to ensure the correct and uniform application of legislation by the courts when considering cases related to intellectual property, it is recommended that explanations are developed for the courts on the scope of property rights of intellectual property owners in our legislation. In addition, it is desirable to establish a judicial panel specializing in intellectual property disputes in the Supreme Court of the Republic of Uzbekistan.

3.7. Well-known trademarks. Based on Part 2 of Article 16 of the TRIPS Agreement, Article 32¹ of the Law “On Trademarks, Service Marks and Apellations of Origin” is recommended to fill with specified criteria how to recogniza a trademark as a well-known trademark.

3.8. Patentable subject matter. According to Article 27.3(b) of the TRIPS Agreement, microorganisms, non-biological and microbiological processes must be compulsorily patented, accordingly the list of patentable objects in Article 6 of the Law “On Inventions, Utility Models and Industrial designs” should be supplemented with non-biological and microbiological processes.

3.9. Compulsory licensing. The procedures for granting compulsory non-exclusive licenses related to the permission to use the object of industrial property without the consent of the patent owner, provided in the Law “On Inventions, Utility Models and Industrial Designs” and the procedures for issuing these licenses are provided in Article 31(bis) of TRIPS Agreement and its Annex. It is recommended to harmonize national legislation with the "system" of compulsory licensing of pharmaceutical products listed in the Annex (parts 3 and 4 of the annex to the agreement).

3.10. Criminal sanctions. Article 149 of the Criminal Code is recommended to be amended, taking into account the fact that the Code should clearly define the means of criminal protection and crimes in relation to all objects of intellectual property.

3.11. Customs control. The Article 383 of the Customs Code of the Republic of Uzbekistan (Goods for which measures are not taken by customs authorities to protect rights to intellectual property objects) is appropriate to be revised and the Code should be supplemented with the norms in terms of ex officio action against alleged infringement by customs authorities. It is proposed to grant the authority to apply measures to stop the export of goods on its own initiative (i.e. regardless of the application of the right holder).

3.12. Article 40 of the Law of the Republic of Uzbekistan “On International Agreements of the Republic of Uzbekistan” is recommended to include a clause on

suspending the validity of an international agreement of the Republic of Uzbekistan in the event of a pandemic or other unforeseen circumstances in accordance with Article 73b(III) of the Agreement. This, in researcher's opinion, leads to clearness in legislation.

**НАУЧНЫЙ СОВЕТ DSc.07/03.06.2023.Yu.22.04 ПО ПРИСУЖДЕНИЮ
УЧЕНЫХ СТЕПЕНЕЙ ПРИ ТАШКЕНТСКОМ
ГОСУДАРСТВЕННОМ ЮРИДИЧЕСКОМ УНИВЕРСИТЕТЕ**

**ТАШКЕНТСКИЙ ГОСУДАРСТВЕННЫЙ ЮРИДИЧЕСКИЙ
УНИВЕРСИТЕТ**

АЛМОСОВА ШАХНОЗА СОБИРОВНА

**МЕЖДУНАРОДНО-ПРАВОВОЕ РЕГУЛИРОВАНИЕ ПРАВ
ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ В РАМКАХ ВСЕМИРНОЙ
ТОРГОВОЙ ОРГАНИЗАЦИИ**

12.00.10 – Международное право

АВТОРЕФЕРАТ
диссертации доктора философии по юридическим наукам (PhD)

Ташкент – 2024 год

Тема диссертации доктора философии (PhD) зарегистрирована Высшей аттестационной комиссией при Министерстве высшего образования, науки и инноваций Республики Узбекистан за № B2023.4.PhD/Yu1259.

Докторская диссертация выполнена в Ташкентском государственном юридическом университете.

Автореферат диссертации размещен на трех языках (узбекском, английском, русском (резюме)) на веб-сайте Научного совета (<https://tsul.uz/uz/fan/avtoreferatlar>) и Информационно-образовательном Портале «Ziyonet» (www.ziyonet.uz).

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Ведущая организация: Университет мировой экономики и дипломатии

Защита диссертации состоится «1» августа 2024 года в 11:00 на заседании Научного совета DSc.07/03.06.2023.Yu.22.04 при Ташкентском государственном юридическом университете. (Адрес: 100047, г.Ташкент, улица Сайилгох, 35. Тел.: (99871) 233-66-36; факс: (998971) 233-37-48; e-mail: info@tsul.uz).

С диссертацией (PhD) можно ознакомиться в Информационно-ресурсном центре Ташкентского государственного юридического университета (зарегистрировано за № 1274). (Адрес: 100047, г.Ташкент, ул. А.Темура, 13. Тел.: (99871) 233-66-36).

Автореферат диссертации разослан «16» июля 2024 года.
(протокол реестра № 9 от «16» июля 2024 года).

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ВВЕДЕНИЕ (Аннотация докторской диссертации)

Целью исследования является разработка научно обоснованных предложений и рекомендаций по защите прав интеллектуальной собственности, связанных с торговлей в рамках ВТО, по гармонизации законодательства Республики Узбекистан с нормами соглашения ТРИПС и по совершенствовании международных и национальных механизмов защиты прав интеллектуальной собственности.

Объектом исследования является система международно-правовых отношений, связанных с регулированием прав интеллектуальной собственности в рамках ВТО.

Научная новизна исследования заключается в следующем:

обоснована необходимость использования в законодательстве Республики Узбекистан слова «репутация» при определении понятия географического указания при согласовании определения с текстом Соглашения ТРИПС;

обоснована необходимость определения порядка выдачи принудительных неисключительных лицензий в законодательстве Республики Узбекистан связаны с разрешением на использование объекта промышленной собственности без согласия патентообладателя с компенсацией в пропорциональном размере, указанного в Соглашении ТРИПС ВТО;

обоснована необходимость разрешить в Республике Узбекистан использование объектов промышленной собственности, охраняемых патентами, при условии уведомления патентообладателя и выплаты ему пропорционального размера компенсации в случае стихийных бедствий, аварий, эпидемий и других аварийных ситуаций;

обоснована необходимость включения в национальное законодательство правила о том, что если продукт, полученный запатентованным способом, является новым, суд возлагает на ответчика обязанность доказать, что способ получения такого продукта отличается от запатентованного;

обоснована необходимость включения в национальное законодательства Республики Узбекистан нормы, связанной с запретом разгласить конфиденциальную информацию в документах, предоставленных при государственной регистрации лекарственного средства, содержащего новые химические вещества и использовать её в коммерческих целях без согласия заявителя.

Внедрение результатов исследований. Результаты исследования были использованы:

предложение автора по включению слова «репутация» при гармонизации определения понятия «Географическое указание» в Законе Республики Узбекистан «О географических указаниях» с понятием «Географическое указание» в статье 22 Соглашения ТРИПС было использовано при формировании статьи 3 Закона Республики Узбекистан «О географических указаниях» (Акт внедрения Сената Олий Мажлиса Республики Узбекистан от 15 апреля 2022 года № 10). Данное предложение послужило уточнить разницу

терминов «наименование места происхождения» и «географическое указание» в национальном законодательстве Республики Узбекистан.

предложение по использованию объекта промышленной собственности без согласия патентообладателя с компенсацией в пропорциональном размере и установлением порядка выдачи принудительных (неисключительных) лицензий (статья 31(bis) Соглашения ТРИПС и приложения к Соглашению) нашло применение при разработке текста статьи 11¹ Закона Республики Узбекистан «Об изобретениях, полезных моделях и промышленных образцах», который дополнен частью 2 статьи 1 Закона Республики Узбекистан «О внесении изменений и дополнений в некоторые законодательные акты Республики Узбекистан в связи с гармонизацией национального законодательства Республики Узбекистан с соглашениями Всемирной Торговой Организации» (Акт Законодательной палаты Олий Мажлиса Республики Узбекистан от 6 марта 2024 года № 02/4-61). Это послужило гармонизации правовой базы и практики, связанной с использованием объекта промышленной собственности в Республике Узбекистан без согласия патентообладателя, а также с нормами Соглашения ВТО ТРИПС;

предложение по применению объектов промышленной собственности, охраняемые патентами, при стихийных бедствиях, катастрофах, эпидемиях и других чрезвычайных обстоятельствах с уведомлением патентообладателя и выплатой ему соразмерной компенсации было использовано при формировании части 3 статьи 1 Закона Республики Узбекистан «О внесении изменений и дополнений в некоторые законодательные акты Республики Узбекистан в связи с гармонизацией национального законодательства Республики Узбекистан с соглашениями Всемирной Торговой Организации» (Акт Законодательной палаты Олий Мажлиса Республики Узбекистан от 6 марта 2024 года № 02/4-61). Это послужило защитить экономические интересы владельцев патентов, вытекающих из патентов, и в то же время позволяло правительствам ограничить патентные права в чрезвычайных ситуациях.

предложение по гармонизации национального законодательства со статьей 34 Соглашения по торговым аспектам прав интеллектуальной собственности было использовано в формулировке части 4 статьи 1 Закона Республики Узбекистан «О внесении изменений и дополнений в некоторые законодательные акты Республики Узбекистан в связи с гармонизацией национального законодательства Республики Узбекистан с соглашениями Всемирной Торговой Организации» при совершенствовании части второй статьи 30 Закона Республики Узбекистан «Об изобретениях, полезных моделях и промышленных образцах» дополняя статью следующего содержания «Если продукт, полученный запатентованным способом, является новым, суд может возлагать на ответчика обязанность доказать, что способ получения такого продукта отличается от запатентованного способа» (Акт Законодательной палаты Олий Мажлиса Республики Узбекистан от 6 марта 2024 года № 02/4-61). Это послужило совершенствованию норм доказывания по делам о нарушениях на способ в законодательстве Республики Узбекистан.

предложение по гармонизации статьи 12 Закона Республики Узбекистан «О лекарственных средствах и фармацевтической деятельности» с частью 3 статьи 39 Соглашения о торговых аспектах прав интеллектуальной собственности включая в национальное законодательства Республики Узбекистан нормы, связанной с запретом разгласить конфиденциальную информацию в документах, предоставленных при государственной регистрации лекарственного средства, содержащего новые химические вещества и использовать её в коммерческих целях без согласия заявителя было использовано при формировании статьи 4 Закона Республики Узбекистан «О внесении изменений и дополнений в некоторые законодательные акты Республики Узбекистан в связи с гармонизацией национального законодательства Республики Узбекистан с соглашениями Всемирной Торговой Организации». Это послужило повышению правовой защиты конфиденциальной информации в нашем национальном законодательстве.

Структура и объем диссертации. Диссертация состоит из введения, трех глав, заключения, списка использованной литературы и приложений. Объем диссертации составляет 142 страницы (кроме части списка использованной литературы).

E'LON QILINGAN ISHLAR RO'YXATI
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LIST OF PUBLISHED WORKS

I bo'lim (I chast; I part)

1. Sh.S.Almosova «JST doirasida intellektual mulk huquqlari va O'zbekiston Respublikasining tashkilotga a'zoligi oldidan qonunchilikni uyg'unlashtirish masalalari». Monografiya. – T. “LESSON PRESS” nashriyoti, 2022. – 88 b.
2. Алмосова Ш. ТРИПС битими нормаларини Ўзбекистон Республикаси интеллектуал мулк қонунчилигига имплементация қилиш муаммолари // “Юрист ахборотномаси” ҳуқуқий, ижтимоий, илмий-амалий журнал 2020 йил 3-сони (63-71 б) (12.00.00)
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6. Almosova Sh. Intellektual mulk obyektlarining bojxona nazoratida “parallel import” amaliyoti// Yuridik fanlar axborotnomasi huquqiy ilmiy-amaliy jurnal/ № 4 / 2022 (12.00.00 №20)
7. Almosova Sh. Intellektual mulk huquqlarini ta'minlash va huquqbuzarliklarni bartaraf qilish choralari: O'zbekiston va Germaniya amaliyotining qiyosiy tahlili// Ҳуқуқий тадқиқотлар журнали/ 8 сон, 8 жилд/2023 106-112 б. (12.00.00 №19)
8. Алмосова Ш. ЖСТнинг “Миллий режим” тамойили ва уни Ўзбекистон қонунчилигига имплементация қилиш муаммолари// “Юрист ахборотномаси” ҳуқуқий, ижтимоий, илмий-амалий журнал 2023 йил 5-сони (89-95 б) (12.00.00)
9. Almosova Shahnoza. Compulsory Licensing – A Derogation from TRIPS Norms to use in Pandemic Times// Journal of Ethics and Diversity in International Communication. Volume: 2 Issue: 8. 2022 Pages: 30-34 (Impact factor 6.91)
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Uzbekistan. *International Journal of Law And Criminology*, 3(07), 94–102. <https://doi.org/10.37547/ijlc/Volume03Issue07-16> (Impact factor 7.691)

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15. Алмосова Ш. Барқарор ривожланиш мақсадларини амалга оширишда географик кўрсаткичларнинг роли ва уларнинг ҳуқуқий муҳофазаси: Марказий Осиё мисолида// “Ўзбекистон ва БМТ: ўзаро ҳамкорлик ва барқарор тараққиёт” Республика илмий-амалий онлайн конференция материаллари. – Т.: Юристар малакасини ошириш маркази. – 235 б.

II bo‘lim (II chast; II part)

1. Almosova Sh. IP challenges in a digital world//“Янги Ўзбекистонда халқаро ҳуқуқ ва ҳуқуқ устуворлиги масалалари: ўзаро алоқадорлик, глобал таҳдидлар ва минтақавий ҳамкорлик” мавзусидаги илмий мақолалар тўплами. – Т.: ТДЮУ, 2021. 290 бет.

2. Almosova Shahnoza Sobirovna. The essence of parallel import and problems of its regulation in the Republic of Uzbekistan// TSUL Legal Report Volume 3, Issue 1 (2022) Pages: 121-126