TOSHKENT DAVLAT YURIDIK UNIVERSITETI HUZURIDAGI ILMIY DARAJALAR BERUVCHI DSc.07/30.12.2019.Yu.22.01 RAQAMLI ILMIY KENGASH

TOSHKENT DAVLAT YURIDIK UNIVERSITETI

TOSHKANOV NURBEK BAHRIDDINOVICH

INTELLEKTUAL MULK OBYEKTLARINI TIJORATLASHTIRISHNING FUQAROLIK-HUQUQIY MASALALARI

12.00.03 – Fuqarolik huquqi. Tadbirkorlik huquqi.
Oila huquqi. Xalqaro xususiy huquq

yuridik fanlar bo‘yicha falsafa doktori (PhD) dissertatsiyasi AVTOREFERATI

Toshkent – 2024

UDK: 347(043.5)(575.1)

Falsafa doktori (PhD) dissertatsiyasi avtoreferati mundarijasi

Content of the abstract of the dissertation of the Doctor of Philosophy

Оглавление автореферата диссертации доктора философии (PhD)

TOSHKENT DAVLAT YURIDIK UNIVERSITETI HUZURIDAGI ILMIY DARAJALAR BERUVCHI DSc.07/30.12.2019.Yu.22.01 RAQAMLI ILMIY KENGASH

TOSHKENT DAVLAT YURIDIK UNIVERSITETI

TOSHKANOV NURBEK BAHRIDDINOVICH

INTELLEKTUAL MULK OBYEKTLARINI TIJORATLASHTIRISHNING FUQAROLIK-HUQUQIY MASALALARI

12.00.03 – Fuqarolik huquqi. Tadbirkorlik huquqi.
Oila huquqi. Xalqaro xususiy huquq

yuridik fanlar bo‘yicha falsafa doktori (PhD) dissertatsiyasi AVTOREFERATI

Toshkent – 2024

Falsafa doktori (PhD) dissertatsiyasi mavzusi O‘zbekiston Respublikasi Oliy ta’lim, fan va innovatsiyalar vazirligi huzuridagi Oliy attestatsiya komissiyasida B2023.3.PhD/Yu1147 raqam bilan ro‘yxatga olingan.

Falsafa doktori (PhD) dissertatsiyasi Toshkent davlat yuridik universitetida bajarilgan.

Dissertatsiya avtoreferati uch tilda (o‘zbek, ingliz, rus (rezyume)) Ilmiy kengashning veb-sahifasida (www.tsul.uz) va «ZiyoNet» Axborot-ta’lim portalida (www.ziyonet.uz) joylashtirilgan.

Ilmiy rahbar:	**Xodjayev Baxshillo Kamolovich** yuridik fanlar doktori, professor
Rasmiy opponentlar:	**Bozorov Sardor Sohibjonovich** yuridik fanlar doktori, professor **Axmadjonov Baxtiyorjon Usubjonovich** yuridik fanlar nomzodi
Yetakchi tashkilot:	**O‘zbekiston Respublikasi Huquqni muhofaza qilish akademiyasi**

Dissertatsiya himoyasi Toshkent davlat yuridik universiteti huzuridagi DSs.07/30.12.2019.Yu.22.01 raqamli Ilmiy kengashning 2024-yil “21” sentabr soat 12:00 dagi majlisida bo‘lib o‘tadi (Manzil: 100047, Toshkent shahar, Sayilgoh ko‘chasi, 35-uy. Tel.: (99871) 233-66-36 faks: (99871) 233-37-48, e-mail: info@tsul.uz).

Dissertatsiya bilan Toshkent davlat yuridik universiteti Axborot-resurs markazida tanishish mumkin (1288-raqam bilan ro‘yxatga olingan) (Manzil: 100047, Toshkent shahar, Amir Temur ko‘chasi, 13-uy. Tel.: (99871) 233-66-36).

Dissertatsiya avtoreferati 2024-yil 6-sentabr kuni tarqatildi.

(2024-yil 6-sentabrdagi 52-son reyestr bayonnomasi).

I.R. Rustambekov
Ilmiy darajalar beruvchi Ilmiy kengash raisi, yuridik fanlar doktori, professor

D.Y. Xabibullayev
Ilmiy darajalar beruvchi Ilmiy kengash kotibi, yuridik fanlar doktori, professor

S.S.Gulyamov
Ilmiy darajalar beruvchi Ilmiy kengash huzuridagi Ilmiy seminar raisining o‘rinbosari, yuridik fanlar doktori, professor

KIRISH (falsafa doktori (PhD) dissertatsiyasi annotatsiyasi)

Dissertatsiya mavzusining dolzarbligi va zarurati. Dunyoda globallashuv sababli jahon iqtisodiyoti bugungi kunda bilimga asoslangan iqtisodiyot bo‘lib, har bir davlat o‘z iqtisodiyotiga ilg‘or tajribalarni joriy etish orqali ushbu tizimda o‘z o‘rniga ega bo‘lishga harakat qilmoqda. Mazkur jarayonda intellektual mulk obyektlari rivojlangan davlatlar uchun ham, rivojlanayotgan davlatlar uchun ham birdek bilimga asoslangan iqtisodiyot asosi, o‘z rivojlanish darajasi o‘sishi barqarorligi, jahondagi mavqeini saqlab turishning eng asosiy vositalaridan biri hisoblanadi. Birgina AQSh yalpi ichki mahsulotining 38,2 foizi intellektual mulkni ko‘p talab qiladigan sohalarga to‘g‘ri kelmoqda[1]. Innovatsiyalar Xitoy YIM 13 foizi, Germaniyada 5 foizini tashkil etmoqda[2]. Mazkur davlatlarda tom ma’noda intellektual mulk bozori shakllangan deyish mumkin. Shuningdek, **S&P Global Ratings** indeksi bo‘yicha qilingan hisob-kitoblarga ko‘ra 1975-yilda nomoddiy aktivlar S&P 500 ga kiruvchi kompaniyalar balansidagi aktivlarning atigi 17 foizini tashkil qilgan. 2023-yilda esa nomoddiy aktivlar kompaniyalar balansdagi jami aktivlarning 90% dan oshgani qayd etilgan[3]. Bularning barchasi intellektual mulk obyektlarini tijoratlashtirishning huquqiy asoslarini hamda ushbu sohadagi ijtimoiy munosabatlarni tartibga solishda an’anaviy va zamonaviy shakllarni, bu borada axborot texnologiyalarining o‘rnini tadqiq qilish hamda mavjud tizimni takomillashtirish dolzarb ahamiyat kasb etayotganligini ko‘rsatadi.

Jahonda intellektual mulk obyektlarini tijoratlashtirish turli usullar, vositalar hamda muayyan huquqiy tartibot asosida amalga oshiriladi. Bu, avvalo, yuqorida ta’kidlanganidek, har bir davlatning ijtimoiy-iqtisodiy rivojlanish darajasidan kelib chiqadi. Aksariyat davlatlar qonunchiligida intellektual mulk obyektlarini tijoratlashtirish masalalari klassik mukofot nazariyasi ***(Reward Theory)***ga asoslangan bo‘lsa, rivojlangan davlatlar (AQSh, Yaponiya) qonunchiligida mazkur nazariya bilan bir qatorda istiqbol ***(Prospect Theory)*** va tijoratlashtirish nazariyalari ***(Commercialization Theory)***ga doir qoidalar ham o‘z ifodasini topganligini ko‘rish mumkin. Shuningdek, jahon amaliyotida intellektual mulk obyektlarini tijoratlashtirishning “chiziqli”, “zanjirli”, “bozor”, “korporativ-davlat”, “klaster”, “korporativlararo” kabi modellar, mutlaq huquqlar ***(exclusive rights)***, mukofotlanish huquqlari ***(remuneration rights)*** singari ssenariylar orqali amalga oshirilishini ko‘rish mumkin. Intellektual mulk obyektlarini tijoratlashtirishning huquqiy jihatdan o‘ziga xosligi sifatida intellektual mulk obyektiga nisbatan uning egasiga tegishli bo‘lgan mulkiy huquqlar majmui – mutlaq huquqlardan tashqari shaxsiy nomulkiy huquqlarning ham mavjudligini keltirish mumkin. Bunda tijoratlashtirishni samarali amalga oshirish maqsadi qo‘yilar ekan shaxsiy

[1] Intellectual Property: What do the statistics indicate? // URL: https://crigroup.com/intellectual-property-what-do-the-statistics-indicate/

[2] WIPO (2024). *World Intellectual Property Report: Making Innovation Policy Work for Development.* Geneva: World Intellectual Property Organization. DOI: https://doi.org/10.34667/tind.49284

[3] Annie Brown (Brand Finance), Jack Gregory (WIPO) and Sacha Wunsch-Vincent (WIPO). Intangible assets owned by all listed companies grew to USD 74 trillion in 2021 - the US and China have the most intangible-asset intensive firms in, respectively, high- and middle-income economies. URL:https://www.wipo.int/global_innovation_index/en/news/2022/news_0007.html

nomulkiy huquqlarga ham rioya etilishi zarurligi dolzarb ahamiyatga ega. Hozirgi globallashuv, axborot-texnologiyalari zamonida intellektual mulk obyektlarining erkin, har tomonlama adolatli, sog‘lom raqobat mavjud bozorini yaratish, intellektual mulk obyekti muallifi (huquq egasi) huquqlari doirasi va chegaralari borasidagi yondashuvlarni o‘z ichiga olgan doktrina (nazariya)larni tadqiq qilish ilmiy-huquqiy nuqtai nazardan muhim ahamiyat kasb etadi. Shuningdek, jahonning ko‘plab davlatlarida intellektual mulk obyektlarini tijoratlashtirishning huquqiy asoslariga oid maxsus qonunchilik yaratilgan va tijoratlashtirish jarayonida raqamli texnologiyalardan foydalanish, elektron-onlayn savdolarni tashkil qilish yo‘lga qo‘yilgan. Biroq sun’iy intellekt tomonidan yaratilgan intellektual mulk obyektlarini tijoratlashtirish masalasi haqida yakuniy to‘xtamga kelinmaganligini ko‘rish mumkin. Bunda huquqshunoslikning, xususan, fuqarolik huquqining asosiy vazifasi sifatida intellektual mulk obyektlarini tijoratlashtirishning fuqarolik-huquqiy asoslarini belgilash, shartnomaviy-huquqiy konstruksiyalarini ishlab chiqish, yuzaga keladigan nizolarni hal etishga oid moddiy huquq normalarini ishlab chiqishga qaratilgan.

O‘zbekiston Respublikasida ham intellektual mulk, uni tijoratlashtirish masalalariga alohida e’tibor qaratilmoqda. Zero, O‘zbekiston Respublikasi Prezidenti ta’kidlaganidek: “Agar intellektual mulk masalasini davlat siyosati darajasiga ko‘tarmasak, O‘zbekiston 10 yildan keyin ham raqobatdosh bo‘lmaydi[1]”. Shundan kelib chiqqan holda bugungi kunda mazkur sohani rivojlantirish, intellektual mulk obyektlarini tijoratlashtirish, uni huquqiy tartibga solish masalalariga alohida e’tibor berib kelinmoqda. Xususan, O‘zbekiston Respublikasi Prezidentining 2024-yil 21-fevraldagi PF-37-son Farmoni bilan tasdiqlangan “O‘zbekiston – 2030” strategiyasining Har bir insonga o‘z salohiyatini ro‘yobga chiqarish uchun munosib sharoitlar yaratish yo‘nalishi bo‘yicha 2024-yilga mo‘ljallangan amaliy tadbirlar rejasining 10-maqsadi sifatida iqtisodiyotning eng tez o‘sib borayotgan yo‘nalishlarida amaliy tadqiqotlarni kuchaytirish, “korxona – oliygoh – ilmiy tashkilot” klaster tizimini joriy etish nazarda tutilgan. Shu va boshqa bu boradagi maqsad-vazifalarga muvofiq O‘zbekistonda intellektual mulk obyektlarini tijoratlashtirishni huquqiy, iqtisodiy, moliyaviy va tashkiliy jihatdan ta’minlash, uni amalga oshirish mexanizmlarini samarali yo‘lga qo‘yish, bunda birinchi navbatda, tijoratlashtirishning asosiy subyektlari faolligini oshirish, qonunchilikni takomillashtirish, shartnomaviy-huquqiy konstruksiyalarni rivojlantirishga qaratilgan ilmiy tadqiqotlarni o‘tkazishga alohida e’tibor qaratilmoqda. Biroq milliy qonunchilikda intellektual mulkni tijoratlashtirish tadbirkorlik faoliyati bo‘lgani holda uni haddan tashqari davlat tomonidan tartibga solinishi ***(qattiq (hard) paternalizm)***, tijoratlashtirish ko‘rsatkichlarini oshirish maqsadi belgilanganda esa bunga huquqiy tartibga solishni yaxshilash emas, balki son va boshqa iqtisodiy ko‘rsatkichlarga erishish maqsad qilinishi, shu bilan birga, fuqarolik qonunchiligining ayrim normalari intellektual mulkni mulk sifatida deyarli tan olmasligi kabi muammolar mavjud. Bu esa intellektual mulk

[1] Intellektual mulk obyektlarini muhofaza qilish masalalari muhokama qilindi. URL: https://president.uz/uz/lists/view/3887

obyektlarini tijoratlashtirish jarayoni ishtirokchilarining o‘zaro munosabatlariga, ilmiy va ishlab chiqarish faoliyatining o‘sishiga salbiy ta’sir ko‘rsatmoqda. Shuningdek, intellektual mulk obyektlarini tijoratlashtirishga bevosita xos bo‘lgan intellektual mulk huquqi sohasidagi “birinchi sotuv” doktrinasi ***(First Sale Doctrine)***, axloqiy huquqlar doktrinasi ***(Moral Rights Doctrine)***, nomoddiy ne’matlar nazariyasi ***(Immaterialgüterrecht)***, utilitarianizm nazariyasi ***(Utilitarianism Theory),*** adolatli foydalanish ***(Fair Use)***, instrumentalizm nazariyasi ***(Instrumentalist Theory)*** kabi umumiy, mukofot nazariyasi ***(Reward Theory)***, istiqbol nazariyasi ***(Prospect Theory)***, tijoratlashtirish nazariyasi ***(the Commercialization Theory)*** kabi maxsus nazariyalar va doktrinalar bugungi kunga qadar yaxlit tadqiqot sifatida o‘rganilmagan. Ularning ayrimlarini O‘zbekiston sharoitida qo‘llash masalalari tahlil qilinmagan. Shunga ko‘ra mamlakatimizda intellektual mulkni tijoratlashtirishni amalga oshirish va himoya qilish bilan bog‘liq qonunchilik hamda huquqni qo‘llash amaliyotini takomillashtirish va istiqbollarini belgilash zaruriyati vujudga kelmoqda, deyish mumkin.

O‘zbekiston Respublikasining 1995-yil 21-dekabrda qabul qilingan Fuqarolik kodeksi, 2019-yil 30-oktabrda qabul qilingan “Ilm-fan va ilmiy faoliyat to‘g‘risida”gi, 2020-yil 24-iyulda qabul qilingan “Innovatsion faoliyat to‘g‘risida”gi qonunlari, O‘zbekiston Respublikasi Prezidentining 2022-yil 6-iyuldagi PF-165-son Farmoni bilan tasdiqlangan 2022-2026-yillarda O‘zbekiston Respublikasining Innovatsion rivojlanish strategiyasi, O‘zbekiston Respublikasi Prezidentining 2018-yil 14-iyuldagi “Ilmiy va ilmiy-texnikaviy faoliyat natijalarini tijoratlashtirish samaradorligini oshirish bo‘yicha qo‘shimcha chora-tadbirlar to‘g‘risida” PQ-3855-son qarori, O‘zbekiston Respublikasi Prezidentining 2022-yil 26-apreldagi PQ-221-son qarori bilan tasdiqlangan 2022-2026 yillarda O‘zbekiston Respublikasida Intellektual mulk sohasini rivojlantirish strategiyasi va mavzuga oid boshqa normativ-huquqiy hujjatlarda belgilangan ustuvor vazifalarni amalga oshirishda ushbu dissertatsiya tadqiqoti muayyan darajada xizmat qiladi.

Tadqiqotning respublika fan va texnologiyalari rivojlanishining asosiy ustuvor yo‘nalishlariga bog‘liqligi. Dissertatsiya tadqiqoti respublika fan va texnologiyalar rivojlanishining “Axborotlashgan jamiyat va demokratik davlatni ijtimoiy, huquqiy, iqtisodiy, madaniy, ma’naviy-ma’rifiy rivojlantirishda innovatsion g‘oyalar tizimini shakllantirish va ularni amalga oshirish yo‘llari” ustuvor yo‘nalishi bo‘yicha bajarilgan.

Muammoning o‘rganilganlik darajasi. Mamlakatimizda intellektual mulk obyektlarini tijoratlashtirishning fuqarolik huquqiy masalalari o‘rganilgan. Xususan, intellektual mulk obyektlaridan tijorat muomalasida foydalanishning huquqiy shakllari S.M.Safoyeva tomonidan, innovatsion faoliyat doirasida intellektual mulk obyektlarini tijoratlashtirish masalasi esa A.D.Axmedov tomonidan tadqiq etilgan. Shuningdek, intellektual mulk obyektlarini tijoratlashtirishning fuqarolik-huquqiy masalalari O.Okyulov, S.Gulyamov, N.Imomov, B.Xodjayev, Z.Akramxodjayeva, L.Toshpo‘latova, Q.Mehmonov,

I.Yakubova, A.Yuldashev, A.Tojiboyevlar tomonidan tadqiq etilganligini keltirib o‘tish mumkin[1].

MDH mamlakatlarida V.I.Muxopad, L.G.Nigmatullina, A.A.Timofeyeva, S.V.Pavlova, S.Y.Sitnikova, A.S.Zubkov, S.V.Nazyutalar intellektual mulk obyektlarini tijoratlashtirishning iqtisodiy jihatlari, L.A.Novoselova, O.A.Ruzakova, A.V.Demkina, M.A.Rojkova, I.S.Muxamedshin, O.S.Grin, K.D.Glazunova, N.Karpova, V.B.Nagrodskaya ushbu jarayonning huquqiy tabiati bo‘yicha tadqiqot ishlari olib borgan[2].

Xorijiy mamlakatlarda intellektual mulk obyektlarini tijoratlashtirishning doktrinal jihatlari L. Donald Prutzman, Eric Stenshoel, Shubha Ghosh, Noreen Wiscovitch Rentas, Diego Espín Cánovas, Elizabeth Schéré tomonidan, intellektual mulkni tijoratlashtirish masalalari G.B. Halt, D.S.Siegel, M. Wright, Robert E. Litan, Lesa Mitchell, E. J. Reedy, Phillip H. Phan, A.Kulyagina, Yu.B.Kolozhvari, S.V.Koval, Haziman Zakaria, Diyana Kamarudin, Muhammad Ashraf Fauzi, Walton Wider, Vanya Bromfield, John Runeckles, Ned T. Himmelrich va boshqalar tomonidan keng o‘rganilgan[3].

Garchi ushbu olimlar tomonidan intellektual mulk obyektlarini tijoratlashtirish faoliyati bilan bog‘liq u yoki bu masalalar ma’lum darajada tadqiq etilgan bo‘lsa-da, bugungi kunda mazkur tijoratlashtirish faoliyatini fuqarolik-huquqiy tartibga solinishiga oid asosiy va dolzarb muammolar ushbu faoliyatni hozirgi kun o‘zgarishlaridan kelib chiqib tahlil qilishni taqozo etadi.

Negaki ular tomonidan O‘zbekiston qonunchiligida intellektual mulk obyektlarini tijoratlashtirish qaysi doktrina yoki ta’limot yoxud qaysi model asosiga qurilganligi, ayni vaqtda, qaysi doktrina va modellarni qonunchilikka tatbiq etish ehtiyoji mavjudligi, tijoratlashtirishga davlat aralashuvi qanday paternalistik yondashuvga ko‘ra tartibga solinishi kerakligi, bunday tartibga solish natijasida yaratilgan qonunchilik tijoratlashtirish jarayoni ishtirokchisi bo‘lgan avtonom subyektlarning qanday harakatlarini qizil chiziq bilan belgilashi zarurligi kabi masalalarga to‘xtalinmagan.

Shu bilan bir qatorda, mazkur dissertatsiya mavzusi doirasida O‘zbekistonda kompleks tadqiq qilingan yaxlit ilmiy tadqiqot ishi mavjud emas.

Dissertatsiya mavzusining dissertatsiya bajarilayotgan oliy ta’lim muassasasining ilmiy-tadqiqot ishlari rejalari bilan mosligi. Dissertatsiya mavzusi Toshkent davlat yuridik universitetining ilmiy-tadqiqot ishlari rejasiga kiritilgan hamda “Intellektual mulk obyektlarini fuqarolik muomalasida bo‘lishini fuqarolik-huquqiy ta’minlash” ilmiy tadqiqotlarining ustuvor yo‘nalishlari doirasida amalga oshirilgan.

Tadqiqotning maqsadi O‘zbekistonda intellektual mulk obyektlarini tijoratlashtirishni fuqarolik-huquqiy tartibga solishga qaratilgan taklif va tavsiyalar ishlab chiqishdan iborat.

Tadqiqotning vazifalari:

[1] Mazkur olimlar asarlarining to‘liq ro‘yxati dissertatsiyaning foydalanilgan adabiyotlar ro‘yxatida berilgan.
[2] Mazkur olimlar asarlarining to‘liq ro‘yxati dissertatsiyaning foydalanilgan adabiyotlar ro‘yxatida berilgan.
[3] Mazkur olimlar asarlarining to‘liq ro‘yxati dissertatsiyaning foydalanilgan adabiyotlar ro‘yxatida berilgan.

intellektual mulk obyektlarini tijoratlashtirish tushunchasiga oid ilmiy-nazariy qarashlarni tahlil qilish;

intellektual mulk obyektlarini tijoratlashtirish faoliyatini huquqiy tartibga solish mexanizmlarini tadqiq etish;

intellektual mulk obyektlarini tijoratlashtirish faoliyatini huquqiy ta’minlash masalalarini tahlil qilish;

intellektual mulk obyektlarini tijoratlashtirishning milliy qonunchilik tajribasini xorijiy davlatlar qonunchiligi bilan qiyoslash orqali uni fuqarolik-huquqiy tartibga solishni takomillashtirish bo‘yicha takliflar ishlab chiqish;

intellektual mulk obyektlarini tijoratlashtirishga oid shartnoma konstruksiyalarini qo‘llash amaliyotini yaxshilash yuzasidan tavsiyalar berish;

O‘zbekiston Respublikasida intellektual mulk obyektlarini tijoratlashtirishni huquqiy tartibga solishni takomillashtirishning asosiy yo‘nalishlariga oid taklif va tavsiyalar ishlab chiqishdan iborat.

Tadqiqotning obyektini O‘zbekistonda intellektual mulk obyektlarini tijoratlashtirishni fuqarolik-huquqiy tartibga solish bilan bog‘liq bo‘lgan munosabatlar tizimi tashkil etadi.

Tadqiqotning predmeti intellektual mulk obyektlarini tijoratlashtirishni fuqarolik-huquqiy tartibga solishga qaratilgan normativ-huquqiy hujjatlar, huquqni qo‘llash amaliyoti, xorijiy mamlakatlar qonunchiligi va amaliyoti hamda tijoratlashtirish jarayoni bo‘yicha nazariyalar, doktrinalar, ilmiy-nazariy qarashlar va g‘oyalardan iborat.

Tadqiqotning usullari. Tadqiqot davomida tizimli-tuzilmaviy, qiyosiy-huquqiy, tarixiylik, mantiqiy (tahlil, sintez, deduksiya va induksiya), statistik kabi usullar qo‘llanilgan.

Tadqiqotning ilmiy yangiligi quyidagilardan iborat:

intellektual mulk obyektlarini tijoratlashtirish deganda mazkur obyektlarni foyda olish maqsadida turli shartnoma shakllaridan foydalangan holda fuqarolik muomalasiga joriy etish tushunilishi, undiruv mutlaq huquqlarga nisbatan qaratilgan holatlar mutlaq huquqlarning boshqa shaxsga o‘tishi asoslaridan biri ekanligi asoslab berilgan;

intellektual mulk obyektlarini tijoratlashtirish usullari doirasi kengligi, intellektual mulk obyektlariga bo‘lgan huquqlar ustav fondiga ulush sifatida kiritilganda mazkur ulush miqdori chegaralangan bo‘lishi kerakligi, shuningdek, majburiy baholanishi shartligi, tijorat siri jumlasiga kiruvchi ma’lumotlarni o‘z ichiga olgan ishlanmalarni tijoratlashtirishda maxsus huquqiy rejimga amal qilinishi zarurligi asoslantirilgan;

muallifning shaxsiy nomulkiy huquqlari tijoratlashtirilishi mumkin emasligi, mazkur huquqlar har qanday holatda unga tegishli bo‘lishi, bunday huquqlar mulkiy huquqlar boshqa shaxslarga o‘tkazilgan taqdirda ham saqlab qolinishi asoslab berilgan;

majburiy litsenziya belgilangan stavka bo‘yicha to‘lovni to‘lash sharti bilan amalga oshirilishi, majburiy litsenziya berilishidan nafaqat shaxs va jamiyat, balki davlat ham manfaatdor bo‘lishi kerakligi asoslantirilgan.

Tadqiqotning amaliy natijalari quyidagilardan iborat:

intellektual mulkni ustav fondiga kiritish yuzasidan fuqarolik qonunchiligi va sud amaliyotini takomillashtirish bo‘yicha takliflar ishlab chiqilgan;

“Innovatsion faoliyat to‘g‘risida” O‘zbekiston Respublikasi Qonunining 24-moddasiga mazkur moddada nazarda tutilgan tijoratlashtirish usullari doirasini kengaytirish yuzasidan qo‘shimcha kiritish zarurati asoslab berilgan;

intellektual mulk obyektlarini tijoratlashtirishga oid shartnomaviy-huquqiy konstruksiyalar namunalari keltirilgan;

universitet va ilmiy-tadqiqot tashkilotlariga tegishli intellektual mulk obyektlarini tijoratlashtirish tizimini yaratish maqsadida har bir oliy ta’lim (tadqiqot) muassasasida intellektual mulk siyosati mavjud bo‘lishi zarurati asoslab berilib, O‘zbekiston oliy ta’lim (tadqiqot) tashkilotlari uchun namunaviy siyosat ishlab chiqilgan.

Tadqiqot natijalarining ishonchliligi. Tadqiqot ishida qo‘llanilgan usullar, uning doirasida foydalanilgan nazariy ma’lumotlar rasmiy manbalardan olinganligi, xorijiy tajriba va milliy qonun hujjatlarining o‘zaro tahlil qilinganligi, xulosa, taklif va tavsiyalarning amaliyotda joriy etilganligi, ilmiy tadqiqot natijalarining xorijiy va milliy nashrlarda e’lon qilinganligi, bildirilgan taklif va xulosalardan tegishli davlat organlari huquq ijodkorligida foydalanilganligi bilan izohlanadi

Tadqiqot natijalarining ilmiy va amaliy ahamiyati. Tadqiqot natijalarining ilmiy ahamiyati undagi ilmiy xulosa va amaliy takliflardan startaplar faoliyatini huquqiy tartibga solish yuzasidan ilmiy tadqiqotlar olib borishda, shuningdek “Biznes huquqi”, “Fuqarolik huquqi”, “Intellektual mulk huquqi” kabi yuridik fanlarini o‘qitish va metodik tavsiyalar tayyorlashda foydalanish mumkin.

Tadqiqot natijalarining amaliy ahamiyati intellektual mulk obyektlarini tijoratlashtirishni huquqiy tartibga soluvchi normativ-huquqiy hujjatlarni, huquqni qo‘llash amaliyotini takomillashtirishda, shuningdek tadbirkorlik subyektlari amaliyotida foydalanish mumkinligi bilan belgilanadi.

Tadqiqot natijalarining joriy qilinishi. Tadqiqot ishi bo‘yicha olingan ilmiy natijalardan quyidagilarda foydalanilgan:

intellektual mulk obyektlarini tijoratlashtirish deganda mazkur obyektlarni foyda olish maqsadida turli shartnoma shakllaridan foydalangan holda fuqarolik muomalasiga joriy etish tushunilishi, undiruv mutlaq huquqlarga nisbatan qaratilgan holatlar mutlaq huquqlarning boshqa shaxsga o‘tishi asoslaridan biri ekanligi haqidagi takliflardan O‘zbekiston Respublikasi Fuqarolik kodeksining yangi tahriri loyihasi 1084-moddasi va 1091-moddasini shakllantirishda foydalanilgan*(O‘zbekiston Respublikasi Adliya vazirligining 2024-yil 11-iyuldagi № 27/1-30-son dalolatnomasi)*. Mazkur taklif intellektual mulk obyektlarini tijoratlashtirish va ularga bo‘lgan huquqlarga nisbatan undiruvni qaratishning huquqiy asoslari takomillashtirilishiga xizmat qilgan;

intellektual mulk obyektlarini tijoratlashtirish usullari doirasi kengligi, intellektual mulk obyektlariga bo‘lgan huquqlar ustav fondiga ulush sifatida kiritilganda mazkur ulush miqdori chegaralangan bo‘lishi kerakligi, shuningdek, majburiy baholanishi shartligi, tijorat siri jumlasiga kiruvchi ma’lumotlarni o‘z

ichiga olgan ishlanmalarni tijoratlashtirishda maxsus huquqiy rejimga amal qilinishi kerakligi bo‘yicha bildirilgan takliflardan O‘zbekiston Respublikasi Tadbirkorlik kodeksi loyihasining 318-moddasi 2-4-qismlarini shakllantirishda foydalanilgan *(O‘zbekiston Respublikasi Adliya vazirligining 2024-yil 11-iyuldagi № 27/1-31-son dalolatnomasi)*. Mazkur taklif intellektual mulk obyektlarini tijoratlashtirish usullari doirasini aniqlash, ushbu obyektlarga bo‘lgan huquqlarni ustav fondiga ulush sifatida kiritish, bunda tijorat sirining maxsus huquqiy rejimiga amal qilinishi zarurligiga doir qonunchilikni takomillashtirishga xizmat qilgan;

muallifning shaxsiy nomulkiy huquqlari tijoratlashtirilishi mumkin emasligi, mazkur huquqlar har qanday holatda unga tegishli bo‘lishi, bunday huquqlar mulkiy huquqlar boshqa shaxslarga o‘tkazilgan taqdirda ham saqlab qolinishi haqidagi takliflardan O‘zbekiston Respublikasi Oliy sudi Plenumining 2023-yil 23-iyundagi “Intellektual mulkka oid ishlarni ko‘rib chiqishning ayrim masalalari to‘g‘risida” 19-son qarorining 16-bandi 2-xatboshisini shakllantirishda foydalanilgan *(O‘zbekiston Respublikasi Oliy sudining 2024-yil 27-maydagi № 08/458-24-son dalolatnomasi)*. Mazkur taklif shaxsiy nomulkiy huquqlarga oid huquqni qo‘llash amaliyotini takomillashtirishga xizmat qilgan;

majburiy litsenziya belgilangan stavka bo‘yicha to‘lovni to‘lash sharti bilan amalga oshirilishi, majburiy litsenziya berilishidan nafaqat shaxs va jamiyat, balki davlat ham manfaatdor bo‘lishi kerakligi haqidagi takliflardan “O‘zbekiston Respublikasining ayrim qonun hujjatlariga O‘zbekiston Respublikasi milliy qonunchiligini Jahon savdo tashkiloti bitimlariga muvofiqlashtirishni nazarda tutuvchi o‘zgartirish va qo‘shimchalar kiritish to‘g‘risida”gi 2024-yil 15-fevraldagi O‘RQ–908-son Qonunining 1-moddasi 2-bandini (O‘zbekiston Respublikasining 1994-yil 6-mayda qabul qilingan “Ixtirolar, foydali modellar va sanoat namunalari to‘g‘risida”gi 1062-XII-sonli Qonuniga kiritilgan 11^1-moddani) shakllantirishda foydalanilgan *(O‘zbekiston Respublikasi Oliy Majlisi Qonunchilik palatasi huzuridagi Parlament tadqiqotlari institutining 2024-yil 28-maydagi №3/08-93-son xati va dalolatnomasi)*. Mazkur taklif sanoat mulki obyektlari uchun majburiy litsenziya berishning huquqiy asoslari yaratilishiga xizmat qilgan.

Tadqiqot natijalarining aprobatsiyasi. Tadqiqot natijalari 8 ta xalqaro va 2 ta respublika miqyosida o‘tkazilgan ilmiy-amaliy konferensiyalarda muhokamadan o‘tgan.

Tadqiqot natijalarining e’lon qilinganligi. Tadqiqot mavzusi bo‘yicha jami 17 ta ilmiy ish, shu jumladan, OAKning dissertatsiya asosiy ilmiy natijalarini chop etishga tavsiya etilgan nashrlarda 7 ta maqola (shu jumladan, 1 ta xorijiy maqola) chop etilgan.

Dissertatsiyaning tuzilishi va hajmi. Dissertatsiya tuzilishi kirish, 9 ta paragrafni qamrab olgan 3 ta bob, xulosa, foydalanilgan adabiyotlar ro‘yxati va ilova qismlaridan iborat. Dissertatsiya hajmi 154 betni (foydalanilgan adabiyotlar ro‘yxati va ilovalardan tashqari) tashkil etadi.

DISSERTATSIYANING ASOSIY MAZMUNI

Dissertatsiyaning kirish qismida tadqiqot mavzusining dolzarbligi va zarurati, tadqiqotning respublika fan va texnologiyalari rivojlanishining asosiy ustuvor yo‘nalishlariga muvofiqligi, tadqiq etilayotgan muammoning o‘rganilganlik darajasi, dissertatsiya mavzusining dissertatsiya bajarilayotgan oliy ta’lim muassasasining ilmiy-tadqiqot ishlari bilan mosligi, tadqiqotning maqsad va vazifalari, obyekti va predmeti, usullari, tadqiqotning ilmiy yangiligi va amaliy natijasi, tadqiqot natijalarining ishonchliligi, tadqiqot natijalarining ilmiy va amaliy ahamiyati, ularning joriy qilinganligi, tadqiqot natijalarining aprobatsiyasi, natijalarning e’lon qilinganligi, dissertatsiyaning hajmi va tuzilishi haqida ma’lumotlar yoritib berilgan.

Dissertatsiyaning ***“Intellektual mulk obyektlarini tijoratlashtirishga nazariy-huquqiy tavsif”*** deb nomlangan birinchi bobida intellektual mulk huquqiga oid huquqiy nazariya (doktrina)lar, ularning tijoratlashtirish bilan bog‘liq jihatlari, intellektual mulk obyektlarini tijoratlashtirish tushunchasi, fuqarolik-huquqiy belgilari, intellektual mulk obyektlarini tijoratlashtirish bo‘yicha huquqiy nazariyalar, uning iqtisodiy va huquqiy modellari tahlil qilingan. Zamonaviy intellektual mulk huquqida amal qilayotgan klassik (huquqlarning tugashi doktrinasi ***(Exhaustion Doctrine)***, nomoddiy ne’matlar nazariyasi ***(Immaterialgüterrecht)***, axloqiy huquqlar doktrinasi ***(Moral Rights Doctrine)***, utilitarianizm nazariyasi ***(Utilitarianism Theory),*** mehnat nazariyasi ***(Labor Theory)***, shaxsiyat nazariyasi ***(Personality Theory)***, ijtimoiy rejalashtirish nazariyasi ***(Social Planning Theory)*** va zamonaviy (adolatli foydalanish ***(Fair Use)*** doktrinasi, instrumentalizm nazariyasi ***(Instrumentalist Theory)*** kabi nazariyalar va ularning mazmun-mohiyati tahlil qilingan. Ushbu nazariyalarning milliy qonunchilikdagi ifodasi hamda intellektual mulk obyektlarini tijoratlashtirishga ta’siri yuzasidan fikr yuritilgan.

Shuningdek, dissertant tomonidan intellektual mulk obyektlarini tijoratlashtirishga doir nazariyalar ham tahlil qilinib, milliy qonunchilik mukofot nazariyasi ***(Reward Theory)***ga asoslanganligi ochib berilgan. Istiqbol ***(“Prospect” Theory)*** va tijoratlashtirish nazariyalari ***(the Commercialization Theory)*** qoidalari ham qonunchilikda mavjudligi, ularni qonunchilikda yanada to‘g‘ri aks ettirish istiqbollari yuzasidan fikrlar bildirilgan. Bunda AQShda intellektual mulk obyektlarini tijoratlashtirishda hukmron nazariya mukofot nazariyasi hisoblansa-da, uning istiqbol va tijoratlashtirish nazariyalari qoidalari bilan uyg‘unlashtirilganligiga alohida urg‘u berilgan. O‘zbekiston sharoitida Bay-Doul kabi qonunchilik hujjatlarini qabul qilish zarurati bayon qilingan. Tijoratlashtirish nazariyasi qoidalarini joriy etishda esa Yaponiyaning “Universitetlar va boshqa davlat ilmiy-tadqiqot institutlarida yaratilgan texnologiyaga oid ilmiy ish natijalarini xususiy sektorga transfer qilinishini qo‘llab-quvvatlash to‘g‘risida”gi qonuni tajribasiga tayanish mumkinligi asoslantirilgan.

Ommaviy huquq sohasiga taalluqli bo‘lsa-da, monopoliyaga qarshi kurashish va huquqlarni suiiste’mol qilishni cheklashga qaratilgan tabiiy monopoliya nazariyasi ***(Theory of Natural Monopoly)***, suiiste’mol qilish ***(Misuse Doctrine)*** nazariyalarining intellektual mulk obyektlarini tijoratlashtirishdagi ahamiyati xususida so‘z yuritilgan.

Intellektual mulk obyektlarini tijoratlashtirish modellari bayon qilinar ekan, ularning innovatsiyalar bilan nisbatiga ham to‘xtalib o‘tilgan. Ularning qonunchilikdagi ifodasi yuzasidan misollar keltirilgan. Mualliflik huquqi obyektlarini tijoratlashtirishga oid mutlaq huquqlar ***(exclusive rights)*** va mukofotlanish huquqlari ***(remuneration rights)*** ssenariylari qiyosiy tahlil qilinib, ularning bir-biridan farqli hamda afzal jihatlari ochib berilgan. Bunda klassik ssenariy sifatida mutlaq huquqlar ***(exclusive rights)*** ssenariysidan ko‘ra mukofotlanish huquqlari ***(remuneration rights)*** ssenariysidan foydalanishning ham iqtisodiy, ham ma’naviy, ham huquqiy foydasi yuqori bo‘lishi amaliy misollar bilan asoslantirilgan.

Tadqiqotchi intellektual mulk obyektlarini tijoratlashtirish tushunchasi va uning fuqarolik-huquqiy belgilari haqida ham ushbu bobda to‘xtalib o‘tganligini ko‘rish mumkin. Intellektual mulk obyektlarini tijoratlashtirish tushunchasini tahlil qilishda u ko‘plab huquqshunos (M.A.Rojkova, O.A.Ruzakova, A.Demkina, O.Oqyulov, X.Radjapov, S.Safoyeva, B.Xodjayev, A.D.Axmedov) va iqtisodiy sohadagi S.Sudarikov, V.Muxopad kabi olimlarning fikr va qarashlaridan foydalangan. Shuningdek, Butunjahon intelektual mulk tashkiloti, Jahon savdo tashkiloti tomonidan ishlab chiqilgan ta’riflardan misollar keltirgan. Ularni bir-biri bilan taqqoslash orqali intellektual mulk obyektlarini tijoratlashtirish deganda iqtisodiy nuqtai nazardan qo‘shimcha qiymat yaratish tushunilsa, huquqiy jihatdan ularni fuqarolik muomalasiga kiritish tushunilishi asoslab berilgan.

Intellektual mulk obyektlarini tijoratlashtirishning fuqarolik-huquqiy belgilarini ochib berishda qonunchilik va olimlarning ilmiy-nazariy qarashlari bilan cheklanilmasdan, zamonaviy intellektual mulk huquqida amalda bo‘lgan nazariyalarga asoslangan holda fikr yuritilgan. Bu bilan intellektual mulk huquqi sohasidagi nazariyalar va ularning intellektual mulk obyektlarini tijoratlashtirishdagi ahamiyati ochib berilgan.

Dissertatsiyaning ikkinchi bobi ***“Intellektual mulk obyektlarini tijoratlashtirishning fuqarolik-huquqiy usullari”*** deb nomlanib, ushbu bobda intellektual mulk obyektlarini tijoratlashtirishning an’anaviy hamda noan’anaviy (zamonaviy) shakllari, intellektual mulk obyektlariga bo‘lgan huquqlarni garovga qo‘yish va mazkur huquqlarga undiruvni qaratish, bu boradagi ba’zi muammolar tahlil qilingan.

Tadqiqotchi intellektual mulk obyektlarini tijoratlashtirish shakllarini an’anaviy va noan’anaviy shakllarga ajratishda Butunjahon intellektual mulk tashkilotining bu boradagi pozitsiyasi hamda milliy qonunchilikda belgilangan tijoratlashtirishning asosiy usullaridan kelib chiqib fikr yuritgan. Dissertant ilmiy va ilmiy-texnikaviy faoliyat natijalaridan foydalangan holda yaratilgan tovarlarni (bajarilgan ishlarni, ko‘rsatilgan xizmatlarni) realizatsiya qilish yoki ushbu natijalardan o‘z ehtiyojlari uchun foydalanishga xorijiy (AQSh) va milliy tajriba nuqtai nazaridan yondashgan. Bunda AQShda yaratilgan intellektual mulk obyektidan o‘z ehtiyojlari uchun foydalanish deganda, asosan, ixtirochi tomonidan mazkur obyektni mustaqil tijoratlashtirish tushunilsa, O‘zbekiston sharoitida, asosan, korxona tomonidan moliyalashtirilgan holda yaratilgan ishlanma va ixtirolarning shu korxona tomonidan qo‘llanilishi tushunilishi asoslab berilgan.

Intellektual mulk obyektlarini tijoratlashtirishda unga bo‘lgan huquqlar asosida korxona (tashkilot) tuzish yoki ularning ustav kapitaliga kiritish masalalari

bayon etilar ekan, dissertant intellektual faoliyat natijalari va ularga tenglashtirilgan vositalar guruhlaridan kelib chiqib o‘z fikrlarini bildiradi. Bu bo‘yicha milliy va xorijiy amaliyotni taqqoslaydi. Startaplarning bugungi kundagi ahamiyati, bu boradagi davlat qo‘llab-quvvatlashining muhimligi bo‘yicha fikrlar beradi. O‘zbekiston sharoitida rivojlanayotgan startaplar va ularning tajribasidan misollar keltiradi.

Bobda intellektual mulk obyektlarini tijoratlashtirish uchun tashkil etiladigan yuridik shaxslardan yana biri – *spin-off* kompaniyalar haqida so‘z boradi. Dissertant talqinicha, bu kabi kompaniyalar uchun o‘rnatilgan qoidalar O‘zbekiston Respublikasi Fuqarolik kodeksida shu’ba xo‘jalik jamiyati va qaram xo‘jalik jamiyati uchun o‘rnatilgan normalarga juda yaqin. Bunday jamiyatlar O‘zbekistonda hozirda kam bo‘lsa ham faoliyat yuritayotganligi, ularning oliy ta’lim va davlat ilmiy-tadqiqot muassasalarida tashkil etilishi zarurati borligi asoslantirilgan.

Intellektual mulk obyektlarini tijoratlashtirishning noan’anaviy (zamonaviy) shakllari sifatida O‘zbekistonga endi kirib kelayotgan, ommalashayotgan, shu bilan birga, amalda umuman qo‘llanilmayotgan shakllar tanlab olingan. Injiniring, sanoat kooperatsiyasi, texnik yordam, intellektual mulk lizingi, intellektual mulk aktivlari bilan ta’minlangan sekyuritizatsiya, pulli ijtimoiy mulk shular jumlasidandir. Bunda dissertant mazkur tijoratlashtirish shakllaridan qaysi biri O‘zbekiston uchun istiqbolli, qaysi biri esa, ayni paytda, istiqbolsiz bo‘lishi mumkinligi yuzasidan fikr yuritgan.

Intellektual mulk obyektlariga bo‘lgan huquqlarni garovga qo‘yish, ularga undiruvni qaratish jarayonini tahlil qilishda dissertant tomonidan milliy va xorijiy olimlarning fikrlari, bir nechta modellar va xorijiy davlatlar tajribasi keltirib o‘tilgan. Xususan, Xitoy, Janubiy Koreya va Yaponiya kabi davlatlarda intellektual huquqlar garovi bilan ta’minlangan kreditlash fuqarolarni intellektual mulkni yaratishga rag‘batlantirish, kichik va o‘rta biznesning yuqori texnologiyali sektorini rivojlantirish maqsadida davlat siyosati vositasiga aylanganligi, AQSh, Buyuk Britaniyada esa haqiqiy nomoddiy aktivlar bozori shakllanganligi bayon etilgan.

Dissertant fikricha, milliy qonunchilikda belgilangan garovga oid normalar, asosan, moddiy ashyolarni garovga qo‘yishga yo‘naltirilgan bo‘lib, O‘zbekiston sharoitida intellektual mulk bilan ta’minlangan kreditlashning ikkita modelidan birini joriy qilish mumkin. Birinchisi, to‘g‘ridan-to‘g‘ri mualliflik huquqi egasi – garovga qo‘yuvchi (qarz oluvchi) va kreditor bank – garovga oluvchi o‘rtasida garov bilan kredit shartnomasini tuzishni o‘z ichiga oladi. Ushbu model banklarning intellektual mulk likvidligining yo‘qligi bilan bog‘liq xavf-xatarlarga nisbatan ehtiyotkorligi, shuningdek, O‘zbekistonda AQShdagi kabi kreditni to‘lashni kafolatlaydigan tashkilotlar mavjud emasligi tufayli hali amalda qo‘llanilmagan bo‘lishi mumkin. Bunday kreditlash tizimi faol qo‘llaniladigan mamlakatlarda (AQSh, Buyuk Britaniya) investitsiya va sug‘urta kompaniyalari, shuningdek, ushbu muammoni hal qilish uchun tashkil etilgan boshqa ixtisoslashtirilgan tashkilotlar kafil sifatida ishlaydi.

Ikkinchi model intellektual mulk huquqlari egasining patent berish shartnomasi asosida innovatsion investitsiya loyihasi tashkilotchisi bo‘lgan korxonaga intellektual mulkdan sanoat (tijorat)da foydalanish huquqini berishi

(topshirish) bilan bog‘liq. Keyinchalik, loyiha tashkilotchisi o‘zining mavjud intellektual mulk huquqlari bilan ta’minlangan kredit olish uchun bankka murojaat qiladi. Bank kredit beradi va ajratilgan aktivlarni maqsadli kompaniya balansiga o‘tkazadi (sotish yo‘li bilan).

Undiruvni intellektual mulk huquqiga qaratish mumkinligi darajasiga ko‘ra muallif bunday obyektlarni uch turga ajratadi:

1. Qonunning bevosita ko‘rsatmalariga ko‘ra undiruv qaratilishi mumkin bo‘lmagan intellektual mulk obyektlari muallifning va boshqa huquq egalarining shaxsiy nomulkiy huquqlari *(masalan, mualliflik huquqi, mualliflik huquqi asarini nashr etish)*;

2. Undiruv qaratilishi imkoniyati yuqoriroq bo‘lgan intellektual mulk obyektlari *(vakolatli organlarda ro‘yxatdan o‘tgan, patent yoki guvohnoma kabi hujjatlar bilan tasdiqlangan huquqlar)*;

3. Undiruv qaratilishi bevosita qonun bilan taqiqlanmagan, biroq undiruv tartibi va huquqni tasdiqlovchi hujjatlarning aniq huquqiy tartibga solinmaganligi sababli undiruvni amalga oshirish nihoyatda qiyin bo‘lgan obyektlar *(oshkor etilmagan axborot (nou-xau), integral mikrosxemalar topologiyasi, ro‘yxatdan o‘tmagan EHM dasturlari)*.

Yuqoridagilarga asosan, intellektual mulk huquqlari garovi va ularga nisbatan undiruvni qaratish mexanizmlarini takomillashtirish yuzasidan ilmiy mulohazalar bildirilib, qonunchilikka takliflar ishlab chiqilgan.

Dissertatsiyaning uchinchi bobi ***“Intellektual mulk obyektlarini tijoratlashtirishning fuqarolik-huquqiy vositalari”*** deb nomlangan. Bunda intellektual mulk obyektlarini tijoratlashtirishning shartnomaviy-huquqiy konstruksiyalari, ularni qaysi tijoratlashtirish shakli uchun tanlash maqsadga muvofiqligi, tijoratlashtirishda avtonomiya tizimini yo‘lga qo‘yish, buning davlat, unga tegishli oliy ta’lim muassasalari va ilmiy-tadqiqot tashkilotlari uchun ahamiyati tahlil qilingan.

Intellektual mulk obyektlarini tijoratlashtirishning shartnomaviy-huquqiy konstruksiyalarini tahlil etishda dissertant ushbu turdagi shartnomalarni uchta katta guruhga bo‘lishni maqsadga muvofiq deb topadi:

1) Intellektual faoliyat natijalarini yaratish haqidagi shartnomalar *(mualliflik buyurtmasi shartnomasi, intellektual faoliyat natijalarini yaratish buyurtmasi shartnomasi, ITTKI pudrati shartnomasi)*;

2) Mavjud intellektual faoliyat natijalariga bo‘lgan huquqlarni tasarruf etish bo‘yicha shartnomalar *(mutlaq huquqlarni begonalashtirish shartnomasi, litsenziya shartnomasi, ishonchli boshqarish shartnomasi, garov shartnomasi)*;

3) Boshqa intellektual mulk huquqlariga bo‘lgan huquqlarga nisbatan shartnomalar *(mukofotga bo‘lgan huquqlarni amalga oshirish shartnomasi, patent olishga bo‘lgan huquqni tasarruf etish shartnomasi)*.

Bobda mazkur shartnoma turlarining deyarli barchasi muhokama qilingan. Nima uchun aynan ular tijoratlashtirish shartnomalari sifatida ko‘rilishi bo‘yicha fikrlar bildirilgan.

Tahlil davomida ular orasida mutlaq huquqlarni begonalashtirish shartnomasi hamda litsenziya shartnomasi universal hamda xorijiy va milliy tajribada eng ko‘p qo‘llaniladigan shartnoma turlari ekanligi asoslantirilgan. Fikrlarni asoslantirishda

O‘zbekiston Respublikasi Adliya vazirligi tomonidan taqdim etilgan rasmiy statistik ma’lumotlardan foydalanilgan.

Litsenziya shartnomalarining har uchala turi bo‘yicha fikr-mulohazalar bildirilgan. Oshkor etilmagan axborot (nou-xau)ni o‘tkazib berish shartnomasining o‘ziga xos xususiyatlari tahlil etilgan. Shartnomalarni ro‘yxatdan o‘tkazishga oid talablar keltirib o‘tilgan.

Raqamli texnologiyalar davrida intellektual mulk obyektlariga bo‘lgan huquqlarni tasarruf qilish bo‘yicha shartnomalar *(smart-contract)*ni tuzish masalasi ham tahlil etilgan. Dissertant mazkur sohadagi olimlarning qarashi ikki guruhga bo‘linganligini bayon etadi.

Birinchi guruh olimlar buni tijoratlashtirish bo‘yicha alohida shartnomaviy-huquqiy shakl – ***qo‘shilish shartnomalari*** sifatida baholasa, ikkinchi guruh olimlar buni shartnoma tuzish usuli sifatida ko‘radilar. Dissertant mazkur holatda ikkinchi guruh olimlar fikrini qo‘llab-quvvatlaydi. Shuningdek, bobda sun’iy intellekt yordamida yaratilgan intellektual mulk obyektlarining tijoratlashtirilishi masalalariga to‘xtalib o‘tilgan.

Shuningdek, ushbu bobda dissertant tomonidan intellektual mulk obyektlarini tijoratlashtirishda paternalizm va avtonomiyaning o‘zaro nisbati ochib berilgan. Tadqiqotchi mazkur ikki tushunchaning mazmun-mohiyatini ochib berar ekan, bugungi kunda intellektual mulk obyektlarini tijoratlashtirishda kuchli paternalizm ***(strong paternalism)*** tizimi amal qilayotganligini qonunchilik va huquqni qo‘llash amaliyotidan keltirilgan bir nechta misollar bilan asoslaydi.

Ushbu misollarda keltirilgan oqibatlar yuzaga kelmasligi, turli to‘sqinliklarni kamaytirish maqsadida kuchli paternalizmdan avtonomiyaga yo‘naltirilgan ***(autonomy-oriented)***, shu bilan birga, davlatning normativ-huquqiy tartibga solish va nizolarni hal qilish uchun sharoit yaratishdagi o‘rnini inkor etmagan holda aralash paternalizm ***(mixed paternalism)*** o‘tish zarurati mavjudligi bayon etilgan.

Universitetlar va davlat ilmiy-tadqiqot muassasalari intellektual mulk siyosatidan avtonomiyadan foydalanish istiqboli sifatida xorijiy yetakchi universitetlarda patent litsenziyalashdan tushadigan daromadni maksimal darajada oshirishga qaratilgan “litsenziyalash modeli” ***(licensing model)***dan universitet innovatsiyalarining miqdori va bozorga olib chiqish tezligini ta’minlaydigan “hajm modeli” ***(volume model)***ga o‘tilayotganligiga alohida urg‘u berilgan.

Hajm modelining “Erkin agentlik” ***(“Free Agency”)*** modeli, mintaqaviy ittifoqlar ***(Regional Alliances)*** modeli, internet yondashuvlari ***(Internet-Based Approaches)***, fakultet sodiqligi ***(Faculty Loyalty)*** kabi turlari keltirilib, ularni amalga oshirish mexanizmlari yuzasidan fikrlar bildirilgan.

Ayni paytda, O‘zbekistonda amal qilayotgan *“korxona – oliygoh – ilmiy tashkilot”* klaster tizimini tadqiqot uchburchagi modeli ***(Research Triangle Model)***ga o‘zgartirish maqsadga muvofiqligi asoslantirilgan. Bunda klaster modelining qolipi, subyektlar soni emas, balki ularning turi va vazifalari o‘zgarishi, *“davlat-universitet-sanoat”* uchburchagi modeliga asoslanilishi bayon etilgan.

Universitetlarga tegishli intellektual mulk obyektlarini tijoratlashtirishning shartnomaviy-huquqiy mexanizmlari borasida fikr yuritilgan. Mazkur mexanizmda universitetlar intellektual mulk siyosati belgilanishining ahamiyatiga alohida e’tibor qaratilgan.

XULOSA

“Intellektual mulk obyektlarini tijoratlashtirishning fuqarolik-huquqiy masalalari” mavzusidagi tadqiqot ishi natijasida quyidagi ilmiy-nazariy hamda amaliy taklif va xulosalar ishlab chiqildi:

I. Ilmiy-nazariy taklif va xulosalar:

1. O‘zbekiston sharoitida intellektual mulk obyektlarini tijoratlashtirish kuchli paternalistik ***(hard paternalism)*** tartibga solinishi, mazkur tartibga solish turini aralash paternalizm ***(mixed paternalism)***ga o‘tkazish zarurati, bunda qaysi jihatlarda paternalizm, qaysi holatlarda tartibga solishning avtonomiya belgilari tatbiq etilishi mumkinligi amaliy misollar yordamida asoslab berildi.

2. Intellektual mulk obyektlariga oid ijtimoiy munosabatlarning tartibga solishga oid nazariya va doktrinalar muhokama qilinar ekan “birinchi sotuv” doktrinasi ***(First Sale Doctrine)***, axloqiy huquqlar doktrinasi ***(Moral Rights Doctrine)*** nomoddiy ne’matlar nazariyasi ***(Immaterialgüterrecht)***, utilitarianizm nazariyasi ***(Utilitarianism Theory),*** adolatli foydalanish ***(Fair Use)*** doktrinasi kabi intellektual mulk obyektlarini tijoratlashtirishga daxldor nazariyalar va doktrinalar O‘zbekiston fuqarolik qonunchiligida o‘z ifodasini topganligi ilmiy asoslantirildi.

3. O‘zbekiston sharoitida intellektual mulkni tijoratlashtirishning huquqiy tizimi rag‘batlantirish nazariyasi ***(Incentive Theory)*** ustiga qurilganligi asoslab berildi. Bu ijodkor yangi ijod namunasi (ixtiro) yaratganlik uchun moddiy foyda yoki mukofotdan tashqari bunday obyektdan mutlaq qonuniy foydalanish huquqini ham olishini anglatadi. Shuningdek, mazkur tizimni istiqbol ***(Prospect teory)*** nazariyasi va tijoratlashtirish nazariyasi ***(the Commercialization Theory)*** asosida takomillashtirish zarurati mavjud.

4. Intellektual mulk obyektlarini tijoratlashtirish deganda, iqtisodiy tarafdan mutlaq huquqlarni iqtisodiy muomalaga kiritish orqali qo‘shimcha qiymat yaratish tushunilsa, huquqiy nuqtai nazardan mazkur obyektlarni shartnomaviy-huquqiy konstruksiyalar orqali fuqarolik muomalasiga kiritish tushunilishi asoslantirildi.

5. O‘zbekiston sharoitida intellektual mulk obyektlarini tijoratlashtirishning *bozor, klaster, korporativ-davlat (davlat-xususiy) sheriklik modellari*dan foydalanilayotganligi asoslab berildi.

6. Tijoratlashtirishning an’anaviy mutlaq huquqlar ssenariysi ***(exclusive rights scenario)***dan intellektual mulkdan har tomonlama foyda olishni rag‘batlantiruvchi zamonaviy mukofotlanish huquqlari ssenariysiga ***(remuneration rights scenario)*** o‘tish foydaliligi amaliy misollar bilan asoslantirildi.

7. Universitet va ilmiy-tadqiqot tashkilotlariga tegishli bo‘lgan intellektual mulk obyektlarini tijoratlashtirishning amaldagi milliy modeli bo‘lmish klaster modelidan tadqiqot uchburchagi modeli ***(Research Triangle Model)***ga o‘tish zarurati asoslab berildi.

8. Intellektual mulk obyektlarini tijoratlashtirishning qonunchilikda belgilangan uch asosiy usuli – o‘z ehtiyojlari uchun foydalanish, tijorat tashkilotlarini tashkil etish va intellektual mulk obyektlariga bo‘lgan mulk huquqlarini uchinchi shaxslarga o‘tkazish va mazkur obyektlardan foydalanish

huquqi bo‘yicha litsenziya shartnomalarini tuzish – tijoratlashtirishning an’anaviy shakllari ekanligi misollar bilan asoslab berildi.

9. Intellektual mulk obyektlarini tijoratlashtirishning noan’anaviy shakllari sifatida *injiniring, sekyuritizatsiya, strategik alyans, intellektual mulk lizingi* kabi usullardan O‘zbekiston sharoitida foydalanish mumkinligi yuzasidan xulosa qilindi.

10. O‘zbekiston sharoitida intellektual mulk bilan ta’minlangan kreditlashning ikkita modelidan foydalanish mumkinligi haqida xulosaga kelindi. Birinchi model to‘g‘ridan-to‘g‘ri muallif (huquqi egasi) – garovga qo‘yuvchi (qarz oluvchi) va kreditor bank – garovga oluvchi o‘rtasida garov bilan kredit shartnomasini tuzishni o‘z ichiga oladi. Ikkinchi modelda esa taraflar soni uchta bo‘ladi: muallif (huquq egasi), qimmatli qog‘ozlar chiqarishga ixtisoslashgan kompaniya va bank *(sekyuritizatsiya modeli)*.

11. Bankrotlik yoki ijro ishi yuritish doirasida undiruv qaratilishi umkoniyatiga qarab barcha intellektual mulk obyektlarini uch guruhga bo‘lish mumkinligi haqida xulosa qilindi. Bular:

qonunning bevosita ko‘rsatmalariga ko‘ra undiruv qaratilishi mumkin bo‘lmagan intellektual mulk obyektlari;

undiruv qaratilishi imkoniyati nisbatan yuqori bo‘lgan intellektual mulk obyektlari;

undiruv qaratilishi bevosita qonun bilan taqiqlanmagan, biroq undiruv tartibi va huquqni tasdiqlovchi hujjatlarning aniq huquqiy tartibga solinmaganligi sababli undiruvni amalga oshirish nihoyatda qiyin bo‘lgan obyektlar.

II. Tadqiqot natijalari bo‘yicha qonunchilik normalarini takomillashtirishga qaratilgan quyidagi taklif va xulosalar ishlab chiqildi:

1. Intellektual mulk obyektlariga bo‘lgan huquqlarni ustav jamg‘armasiga kiritish yuzasidan Fuqarolik kodeksi yangi tahriri loyihasini quyidagi moddalar bilan to‘ldirish taklif qilinadi:

“58[1]-modda. Xo‘jalik shirkatlari va jamiyatlar ustav fondi (ustav kapitali)ga ulushlar

Xo‘jalik shirkati yoki jamiyati ishtirokchisining uning mol-mulkiga qo‘shgan ulushi pul mablag‘lari, narsalar, boshqa xo‘jalik shirkatlari va jamiyatlarining ustav fondi (ustav kapitali) dagi ulushlari (aksiyalari), qimmatli qog‘ozlar bo‘lishi mumkin. Bunday ulush, agar qonun hujjatlarida boshqacha tartib nazarda tutilgan bo‘lmasa, pul qiymatiga ega bo‘lgan mutlaq huquqlar, litsenziya shartnomalari bo‘yicha huquqlar va intellektual mulk obyektlariga bo‘lgan huquqlar shaklida ham bo‘lishi mumkin.

Qonunda yoki xo‘jalik shirkati yoki jamiyatning ta’sis hujjatlarida ushbu moddaning birinchi qismida ko‘rsatilgan, biroq xo‘jalik shirkati yoki jamiyatning ustav fondi (ustav kapitali)dagi ulushlarni to‘lash uchun kiritilishi mumkin bo‘lmagan mol-mulk turlari belgilanishi mumkin”.

2. Mutlaq huquqlarni garovining huquqiy jihatlarini takomillashtirish yuzasidan Fuqarolik kodeksi yangi tahriri loyihasini quyidagi modda bilan to‘ldirish taklif qilinadi:

“302[1]-modda. Mutlaq huquqlar garovi

Ushbu kodeksning 1079-moddasida belgilangan intellektual faoliyat natijalari va fuqarolik muomalasi ishtirokchilarining, tovarlar, ishlar va xizmatlarning xususiy alomatlarini aks ettiruvchi vositalariga bo‘lgan mutlaq huquqlar garov predmeti bo‘lishi mumkin.

Ushbu Kodeks va boshqa qonunchilik hujjatlarida ayrim intellektual mulk obyektlariga nisbatan mutlaq huquqlar egalaridan boshqa shaxslarga o‘tishiga yo‘l qo‘yilmasligi va begonalashtirilmasligi belgilangan holatlar bundan mustasno.

Mutlaq huquqlar garovini davlat ro‘yxatidan o‘tkazish ushbu Kodeksning IV bo‘limi qoidalariga muvofiq amalga oshiriladi.

Intellektual faoliyat natijasiga yoki fuqarolik muomalasi ishtirokchilarining, tovarlar, ishlar va xizmatlarning xususiy alomatlarini aks ettiruvchi vositalariga bo‘lgan mutlaq huquqni garovga qo‘yish to‘g‘risidagi shartnomaga muvofiq garovga qo‘yuvchi ushbu shartnomaning amal qilish muddati davomida garovga oluvchining roziligisiz bunday natija yoki vositadan foydalanish va tasarruf etish huquqiga ega. Bundan mutlaq huquqlarni begonalashtirish hollari mustasno. Agar shartnomada boshqacha tartib nazarda tutilgan bo‘lmasa, garovga oluvchi garovga qo‘yuvchining roziligisiz mutlaq huquqni begonalashtirishga haqli emas”.

3. Undiruvni intellektual mulk obyektlariga bo‘lgan huquqlarga qaratishning huquqiy mexanizmlarini takomillashtirish yuzasidan Fuqarolik kodeksi yangi tahriri loyihasiga quyidagi o‘zgartirish va qo‘shimchalarni kiritish taklif qilinadi:

“1084-modda. Mutlaq huquqlarning boshqa shaxslarga shartnomasiz o‘tishi

Intellektual mulk obyektiga nisbatan mutlaq huquqlar egasiga tegishli mulkiy huquqlar, agar ushbu Kodeksda yoki boshqa qonunda boshqacha tartib nazarda tutilmagan bo‘lsa, huquq egasi tomonidan shartnoma tuzmasdan boshqa shaxsga to‘liq yoki qisman o‘tkazilishi mumkin, shu jumladan, mutlaq huquqlar huquqiy vorislik (meros bo‘lib va yuridik shaxs – huquq egasi qayta tashkil etilganda) tartibida va ***undiruv huquq egasining mulkiy huquqlariga qaratilganda*** *boshqa shaxsga o‘tadi.*

1091[1]-modda. Undiruvni intellektual mulk obyektlariga bo‘lgan mutlaq huquqlarga va ulardan litsenziya shartnomasi asosida foydalanish huquqlariga qaratish

Muallif (huquq egasi)ga tegishli intellektual mulk obyektlariga bo‘lgan mutlaq huquqlarga nisbatan undiruvni qaratishga yo‘l qo‘yilmaydi. Bundan undiruvni muallif (huquq egasi) tomonidan tuzilgan va shartnoma predmeti unga tegishli muayyan intellektual mulk obyektiga bo‘lgan mutlaq huquqni tashkil etuvchi garov shartnomasi doirasida qaratish holatlari mustasno.

Agar qonunchilik hujjatlari va shartnomada boshqacha tartib belgilanmagan bo‘lsa, undiruv muallif (huquq egasi)ning mutlaq huquqni to‘liq yoki qisman o‘tkazib berish shartnomalari va litsenziya shartnomalari bo‘yicha boshqa shaxslarga nisbatan talablari, shuningdek intellektual mulk obyektlaridan foydalanishdan olinadigan daromadlariga qaratilishi mumkin.

Ushbu modda qoidalari muallif (huquq egasi)ning merosxo‘rlariga, ularning merosxo‘rlariga va boshqalarga nisbatan mutlaq huquqning amal qilish muddati davomida qo‘llaniladi.

Undiruv litsenziatga tegishli intellektual mulk obyektidan foydalanish huquqiga qaratilib, ochiq kim oshdi savdosida sotuvga qo‘yilgan taqdirda muallif (huquq egasi)ga uni sotib olishda imtiyozli huquq beriladi”.

4. “Innovatsion faoliyat to‘g‘risida” O‘zbekiston Respublikasi Qonunining 24-moddasi 2-qismi 3-bandiga quyidagi tahrirda o‘zgartirish kiritish:

“intellektual mulk obyektlariga bo‘lgan mulk huquqlarini uchinchi shaxslarga o‘tkazish va mazkur obyektlardan foydalanishga bo‘lgan huquqni royalti ajratmalariga asoslangan litsenziya shartnomalarini tuzish yo‘li bilan berish, shu jumladan ularni keyinchalik ushbu huquqlarni oluvchi tomonidan tijoratlashtirish sharti bilan berish ***va boshqa usullar*** *orqali amalga oshiriladi”.*

III. Huquqni qo‘llash amaliyotini takomillashtirish bo‘yicha taklif va tavsiyalar:

1. O‘zbekiston Respublikasi Oliy sudi Plenumining “Intellektual mulkka oid ishlarni ko‘rib chiqishning ayrim masalalari to‘g‘risida” 2023-yil 23-iyundagi 19-son qaroriga quyidagi tahrirda 21^1-bandni kiritish taklif etiladi:

“21^1. Intellektual mulkni ustav fondiga kiritish to‘g‘risida qaror yoki yuridik shaxsni tashkil etish to‘g‘risida ta’sis shartnomasida Fuqarolik kodeksining mutlaq huquqni begonalashtirish to‘g‘risidagi shartnomaga yoki litsenziya shartnomasiga kiritilishi kerak bo‘lgan barcha shartlar belgilangan bo‘lsa, bunday hollarda mazkur faktni belgilovchi alohida fuqarolik huquqiy shartnoma (mutlaq huquqni begonalashtirish yoki litsenziya shartnomasi) tuzilishi talab etilmasligiga sudlarning e’tibori qaratilishi lozim. Bunda mazkur huquqlarni davlat ro‘yxatidan o‘tkazish shirkat yoki jamiyatni tashkil etish to‘g‘risidagi qarorni (yoki uning tegishli qismini) taqdim etish sharti bilan muassisning iltimosiga binoan ham amalga oshirilishi mumkin bo‘lib, qonunchilikda ayrim intellektual mulk obyektlariga nisbatan mulkiy huquqlar egalaridan boshqa shaxslarga o‘tishi bo‘yicha istisnolar mavjudligini inobatga olish lozim”.

2. Dissertatsiya tadqiqoti doirasida bir qator intellektual mulk obyektlarini tijoratlashtirishga qaratilgan shartnoma namunalari ishlab chiqildi. Mazkur shartnoma shakllari huquqni qo‘llash subyektlari tomonidan ish faoliyatida qo‘llanilishi mumkin.

3. BIMTning Universitetlar va ilmiy-tadqiqot muassasalari uchun intellektual mulk sohasidagi siyosati to‘g‘risidagi namunaviy nizom qoidalarini oliy ta’lim muassasalari faoliyatida ommaviy qo‘llash maqsadga muvofiq. Universitetlar va ilmiy-tadqiqot muassasalari uchun intellektual mulk sohasidagi siyosatning mavjud bo‘lishi bevosita oliy ta’lim muassasasida yaratilgan intellektual mulk obyektlarini tijoratlashtirish uchun muhim. Shu sababli BIMT va xorijiy davlatlar tajribasi misolida bunday siyosat namunalari hamda ularning ilovalari ishlab chiqilib, dissertatsiya matniga ilova qilindi.

SCIENTIFIC COUNCIL No DSc.07/30.12.2019.Yu.22.01 FOR AWARDING SCIENTIFIC DEGREES AT TASHKENT STATE UNIVERSITY OF LAW

TASHKENT STATE UNIVERSITY OF LAW

TOSHKANOV NURBEK BAHRIDDINOVICH

CIVIL-LAW ISSUES OF COMMERCIALISING INTELLECTUAL PROPERTY ASSETS

12.00.03. – Civil Law. Business Law.
Family Law. International Private Law

ABSTRACT
of doctoral (Doctor of Philosophy) dissertation on legal sciences

Tashkent – 2024

The doctoral dissertation (PhD) theme was registered at the Supreme Attestation Commission under the Ministry of Higher Education, Science and Innovations of The Republic of Uzbekistan by B2023.3.PhD/Yu1147.

The doctoral dissertation is prepared at Tashkent State University of Law.

The abstract of the dissertation is posted in three languages (Uzbek, English, and Russian (resume)) on the website of the Scientific Council (www.tsul.uz) and the informational and educational portal "Ziyonet" (www.ziyonet.uz).

Scientific supervisor:	**Khodjayev Bakhshillo Kamolovich** Doctor of Science in Law, Professor
Official opponents:	**Bozorov Sardor Sohibjonovich** Doctor of Science in Law, Professor
	Akhmadjanov Bakhtiyorjan Usubjanovich Candidate of Law Sciences
The leading organization:	**Law Enforcement Academy of the Republic of Uzbekistan**

The defense of the dissertation will be held on 21 September, 2024 at 12:00 a.m. on the session of the Scientific Council DSc.07/30.12.2019.Yu.22.01 at Tashkent State Law University. (Adress: 100047, Sayilgokh street, 35 Tashkent city. Phone: (99871) 233-66-36; fax: (998971) 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 under No. 1288), (Address 100047, Tashkent city, A.Timur street, 13. Phone: (99871) 233-66-36).

Abstract of the dissertation was submitted on September 6, 2024.

(Registry protocol No.52 on September 6, 2024)

I.R. Rustambekov
Chairman of Scientific Council for awarding scientific degrees, Doctor of Science in Law, Professor

D.Y. Khabibullayev
Scientific Secretary of Scientific Council for awarding scientific degrees, Doctor of Science in Law, Professor

S.S. Gulyamov
Deputy Chairman of Scientific Seminar under Scientific Council for awarding scientific degrees, Doctor of Science in Law, Professor

INTRODUCTION (abstract of PhD thesis)

The actuality and relevance of the dissertation theme. Due to the globalization of the world, today's world economy is a knowledge-based economy, and every country is trying to gain its place in this economic system by introducing best practices to its economy. In this process, intellectual property is the basis of the knowledge-based economy for both developed and developing countries, the stability of their development level, and one of the main means of maintaining their position in the world. 38.2 per cent of US gross domestic product (GDP) goes to intellectual property-intensive industries[1]. Innovations make up 13% of China's GDP and 5% in Germany[2]. It can be said that the intellectual property market has literally been formed in these countries. In addition, **S&P Global Ratings,** maintained by S&P (Standard & Poor's Financial Services LLC) intangible assets in 1975, according to calculations made on the index Companies included in the S&P 500, accounted for only 17% of assets on the balance sheet. In 2023, the same ranking noted that intangible assets exceeded 90% of the total assets on the company's balance sheet (due to[3] the dominance of software in the economy and the market capitalization of technology companies). All this shows that researching the legal basis of intellectual property assets and its commercialization, as well as traditional and modern forms of regulation of social relations in this field, the place of information and communication technologies in this regard, and the improvement of the existing system are of urgent importance.

In the world, commercialization of intellectual property assets is carried out on the basis of various methods, tools and certain legal procedures. This is primarily due to the level of socio-economic development of each country, as noted above. It can be seen that in the legislation of most countries, the issues of commercialization of intellectual property assets are based on the classic ***Reward Theory,*** while in the legislation of developed countries (USA, Japan), along with this theory, there are provisions on ***Prospect Theory*** and ***Commercialization Theory.*** Also, it can be seen that in world practice, there are "linear", "chain", "market", "corporate-state", "cluster", and "inter-corporate" models of commercialization of intellectual property assets, as well as ***exclusive rights*** and ***remuneration rights.*** As a legal peculiarity of the commercialization of intellectual property assets, it is possible to mention the existence of a set of property rights belonging to its owner in relation to the intellectual property asset – in addition to exclusive rights; there are also personal non-property rights. In this regard, the need to observe personal non-property rights is of urgent importance, as the goal of effective commercialization is set. In the current era of globalization and information technologies, to create a free, all-round fair, healthy competition market for intellectual property assets, to research doctrines (theories) that include approaches to the scope and limits of the rights of the author (right holder) of an intellectual property asset are important from the

[1]Intellectual Property: What do the statistics indicate? // URL: https://crigroup.com/intellectual-property-what-do-the-statistics-indicate/

[2]WIPO (2024). *World Intellectual Property Report: Making Innovation Policy Work for Development.* Geneva: World Intellectual Property Organization. DOI: https://doi.org/10.34667/tind.49284

[3]Annie Brown (Brand Finance), Jack Gregory (WIPO) and Sacha Wunsch-Vincent (WIPO). Intangible assets owned by all listed companies grew to USD 74 trillion in 2021 - the US and China have the most intangible-asset intensive firms in, respectively, high- and middle-income economies. URL: https://www.wipo.int/global_innovation_index/en/news/2022/news_0007.html

scientific and legal point of view. Also, in many countries of the world, special legislation on the legal basis of commercializing intellectual property assets has been created, and in the process of commercialization, the use of digital technologies and the organization of electronic and online sales have been established. However, it can be seen that a final decision has not been reached on the commercialization of intellectual property assets created by artificial intelligence. In this, as the main task of jurisprudence, in particular, civil law, it is aimed at determining the civil-law basis of commercialization of intellectual property assets, developing contractual-legal constructions, and developing material law norms related to the resolution of disputes that arise.

Special attention is being paid to intellectual property and its commercialization in the Republic of Uzbekistan. After all, as the President of the Republic of Uzbekistan stated: "If we do not raise the issue of intellectual property to the level of state policy, Uzbekistan will not be competitive even after 10 years[1]" Based on this, special attention is being paid to the development of this field, commercialization of intellectual property assets, and its legal regulation. In particular, the "Uzbekistan – 2030" strategy, approved by the Decree of the President of the Republic of Uzbekistan dated February 21, 2024, No. PF-37 is to create suitable conditions for every person to realize his potential. As the 10th goal of the practical action plan for 2024, it is envisaged to strengthen applied research in the fastest-growing areas of the economy to introduce the "enterprise-university-scientific organization" cluster system. In accordance with these and other goals and tasks in this regard, to ensure the commercialization of intellectual property assets in Uzbekistan from a legal, economic, financial and organizational point of view, to effectively establish mechanisms for its implementation, in this, first of all, to increase the activity of the main subjects of commercialization, special attention is paid to conducting scientific research aimed at improving the legislation and developing contractual –legal constructions. However, in the national legislation, commercialization of intellectual property is an entrepreneurial activity; it is excessively regulated by the state ***(hard paternalism),*** *and when the goal of increasing commercialization indicators is set, it is not the improvement of legal regulation* but the number and other economic indicators. at the same time, there are problems, such as the fact that some norms of civil law hardly recognize intellectual property as property. This has a negative impact on the mutual relations of the participants in the process of commercialization of intellectual property assets, and the growth of scientific and production activities. Also, general theories in the field of intellectual property law such as the ***First Sale Doctrine***, ***Moral Rights Doctrine***, Theory of Immaterial Goods ***(Immaterialgüterrecht)***, ***Utilitarianism theory***, ***Fair Use***, ***Instrumentalist Theory*** and specialist theories such as ***Reward Theory, Prospect Theory*** and ***Commercialization Theory*** have not been studied as a comprehensive study. The issues of applying some of them in the conditions of Uzbekistan have not been analyzed. According to this, it can be said that there is a need to improve the practice of legislation and law enforcement related to the implementation and protection of commercialization of intellectual property assets in our country and to determine the perspectives.

[1]Issues of intellectual property protection were discussed. URL: https://president.uz/uz/lists/view/3887

This research work contributes to the implementation of the tasks stipulated in the Civil Code of the Republic of Uzbekistan dated December 21, 1995, laws "On Science and Scientific Activities" dated October 30, 2019, "On Innovative Activities" dated July 24, 2020, The Innovative Development Strategy of the Republic of Uzbekistan for 2022-2026 approved by the Decree of the President of the Republic of Uzbekistan dated July 6, 2022, No. PD-165, "On Additional Measures to Increase the Efficiency of Commercialization of the Results of Scientific and Scientific and Technical Activities", approved by the Decision of the President of the Republic of Uzbekistan dated July 14, 2018, No. PD-3855, The Strategy for the Development of the Field of Intellectual Property in the Republic of Uzbekistan in 2022-2026, approved by the Decision of the President of the Republic of Uzbekistan dated April 26, 2022, No. PD-221 and other normative legal acts related to the research topic.

The dependence of the research on the priority areas of development of science and technologies in the country. This research work was performed within the framework of the priority "Ways to form a system of innovative ideas and implement them in the social, legal, economic, cultural, spiritual and educational development of an informed society and a democratic state" of the science and technology development of the Republic.

The extent of study of the problem. Civil-law issues of commercializing intellectual property assets have been studied in our country. In particular, the legal forms of using intellectual property assets in commercial transactions were researched by S.M.Safoyeva, and the issue of commercialization of intellectual property assets within the framework of innovative activity was researched by A.D.Ahmedov. Also, it can be mentioned that civil-law of commercializing intellectual property assets were researched by O.Okyulov, S.Gulyamov, N.Imomov, B.Khodjayev, Z.Akramkhodjayeva, L.Toshpolatova, Q.Mehmonov, I.Yakubova, A. Yuldashev, A.Tojiboyev[1].

In the CIS countries economic aspects of commercialization of intellectual property assets were researched by V.I.Mukhopad, L.G.Nigmatullina, A.A.Timofeyeva, S.Y.Sitnikova, A.S.Zubkov, S.V.Nazyuta, the legal nature of this process by L.A.Novoselova, O.A.Ruzakova, A.V.Demkina, M.A.Rojkova, I.S.Mukhamedshin, O.S.Grin, K.D.Glazunova , N.Karpova, V.B.Nagrodskaya[2].

In Foreign Countries doctrinal aspects of intellectual property assets commercialization have been extensively studied by L. Donald Prutzman, Eric Stenshoel, Shubha Ghosh, Noreen Wiscovitch Rentas, Diego Espín Cánovas, Elizabeth Schéré, issues of intellectual property commercialization by G.B. Halt, D.S. Siegel, M. Wright, Robert E. Litan, Lesa Mitchell, E. J. Reedy, Phillip H. Phan, A. Kulyagina, Yu. B. Kolozhvari, S. V. Koval, Haziman Zakaria, Diyana Kamarudin, Muhammad Ashraf Fauzi, Walton Wider, Vanya Bromfield, John Runeckles, Ned T. Himmelrich and others[3].

Although these scientists have researched some issues related to the commercialization of intellectual property assets to a certain extent, the main and

[1] Complete list of the works of these scientists is given in the list of used literature of the dissertation.
[2] Complete list of the works of these scientists is given in the list of used literature of the dissertation.
[3] Complete list of the works of these scientists is given in the list of used literature of the dissertation.

urgent problems related to the civil-law regulation of commercialization activities today arise from the changes in this activity, which requires analysis.

Because by them, the legislation of Uzbekistan is based on which doctrine or model of commercialization of intellectual property, at the same time, which doctrines and models need to be applied to legislation, and what paternalistic approach state intervention in commercialization should be regulated according to such a system the legislation created as a result of the merger did not address such issues as defining the actions of autonomous entities participating in the commercialization process.

In addition, within the scope of this dissertation, there is no comprehensive research work in Uzbekistan.

Relation of the dissertation research with the research plans of the higher educational institution where the dissertation has performed. The topic of the dissertation is included in the research plan of the Tashkent State University of Law and was carried out within the priority directions of scientific research "Civil-law provision of civil circulation of intellectual property assets".

The research aim is to develop proposals and recommendations aimed at civil-legal regulation of the commercialization of intellectual property assets in Uzbekistan.

Research tasks:

analysis of scientific and theoretical views on the concept of commercialization of intellectual property assets;

researching mechanisms of legal regulation of commercialization of intellectual property assets;

analysis of legal issues commercializing of intellectual property assets;

by comparing the national legislative experience of the commercialization of intellectual property assets with the legislation of foreign countries, developing proposals for improving its civil-legal regulation;

making recommendations on improving the practice of applying contract-legal constructions related to the commercialization of intellectual property assets;

It consists of developing proposals and recommendations regarding the main directions of improvement of the legal regulation of commercializing intellectual property assets in the Republic of Uzbekistan.

The object of the research is in Uzbekistan commercialization of intellectual property assets constitutes a system of relations related to civil-legal regulation.

The subject of the research consists of normative legal documents aimed at civil-legal regulation of commercializing intellectual property assets, law enforcement practice, legislation and practice of foreign countries, as well as theories, doctrines, scientific-theoretical views and ideas on the commercialization process.

The Research Methods. Systematic, structural, comparative, legal, historical, logical (analysis, synthesis, deduction, and induction), and statistical methods were used during the research.

The scientific novelty of the research is as follows:

it is justified that the commercialization of intellectual property assets means the introduction of these assets into civil circulation using various forms of contracts for the purpose of making a profit and recovery is one of the grounds for

the transfer of exclusive rights to another person in cases where recovery is directed at exclusive rights;

it is justified necessity that the wide range of methods of commercialization of intellectual property assets, when the rights to intellectual property assets are included as a share in the charter fund, the amount of this share must be limited, as well as the requirement for mandatory evaluation, special requirements for the commercialization of developments containing information included in trade secrets compliance with the legal regime;

it is justified that the personal non-property rights of the author cannot be commercialized, that these rights belong to him in any case, and that such rights are preserved even if the property rights are transferred to other persons;

it is justified that a compulsory license should be issued subject to payment of a fee at the established rate and not only individuals and society, but also the state should be interested in issuing a compulsory license.

The practical results of the research are as follows:

proposals for the improvement of civil legislation and court practice regarding the inclusion of intellectual property in the charter fund were developed;

it is justified that the need to add to Article 24 of the Law of the Republic of Uzbekistan "On Innovative Activities" regarding the expansion of the scope of commercialization methods provided for in this article;

examples of contractual and legal constructions related to the commercialization of intellectual property assets are presented;

it is justified that the need to have an intellectual property policy in every higher education (research) institution, in order to create a system of commercialization of intellectual property assets belonging to universities and research organizations, and a model policy is developed for higher education (research) organizations of Uzbekistan.

The reliability of research results. The reliability of the research result depends on the fact that the methods used in the research work, the theoretical information used within it were obtained from official sources, the mutual analysis of foreign experience and national legislation, the implementation of conclusions, proposals and recommendations in practice, and the publication of scientific research results in foreign and national publications, the relevant state bodies used the stated suggestions and conclusions in the creation of the law.

Scientific and practical significance of research results. The scientific significance of the results of the research can be used from the scientific conclusions and practical proposals in conducting scientific research on the legal regulation of the activities of startups, as well as teaching legal subjects such as "Business Law", "Civil Law", "Intellectual Property Law" and preparing methodological recommendations.

The research results' practical importance is determined by the possibility of using the legal documents regulating the commercialization of intellectual property to improve law enforcement and business entity practice.

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

the proposal that the commercialization of intellectual property assets is understood as the introduction of these assets into civil circulation using various forms of contracts for the purpose of making a profit and cases where the recovery

is aimed at exclusive rights, this is one of the grounds for the transfer of these rights to another person, were used when forming Article 1084 and Article 1091 of the draft new edition of the Civil Code of the Republic of Uzbekistan *(Act No. 27/1-30 of the Ministry of Justice of the Republic of Uzbekistan, dated July 11, 2024)*. This proposal served to improve the legal basis of the commercialization of intellectual property assets and the collection of rights them;

the wide range of methods of commercialization of intellectual property assets, when the rights to intellectual property assets are included as a share in the charter fund, the amount of this share must be limited, as well as the requirement for mandatory evaluation, special requirements for the commercialization of developments containing information included in trade secrets the proposals made regarding the need to follow the legal regime were used in the formation of parts 2-4 of Article 318 of the draft Entrepreneurship Code of the Republic of Uzbekistan *(Act No. 27/1-31 of the Ministry of Justice of the Republic of Uzbekistan dated July 11, 2024)*. This proposal served to define the range of methods of commercialization of intellectual property asset, to include the rights to these assets as a share in the charter fund, and to improve the legislation on the need to follow the special legal regime of commercial secrets;

proposals that the personal non-property rights of the author cannot be commercialized, that these rights belong to him in any case, that such rights are preserved even if the property rights are transferred to other persons, the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan dated June 23, 2023 "On some issues of consideration of cases related to intellectual property" was used in the formation of paragraph 16, paragraph 2 of Decision No. 19 *(Act No. 08/458-24 of the Supreme Court of the Republic of Uzbekistan dated May 27, 2024)*. This proposal served to improve the practice of applying the law related to personal non-property rights;

the proposal that a compulsory license should be subject to payment of a fee in the established amount, that not only individuals and society should be interested in issuing a compulsory license, but also the state was used in the development of the Paragraph 2 of Article 1 of the Law on February 15, 2024 LRU-908 "On Amendments and Additions to Harmonize National Legislation with World Trade Organization Agreements" (Article 11^1 was implemented in the in the Law No. 1062-XII "On Inventions, Utility Models and Industrial Samples" adopted on May 6) *(Act No. 3/08-93 dated May 28, 2024 of the Institute of Parliamentary Research under the Legislative Chamber of Oliy Majlis of the Republic of Uzbekistan)*. This proposal served to create the legal basis for issuing a compulsory license for industrial property assets.

Approbation of research results. The research results were discussed at 8 international and 2 national scientific-practical conferences.

Publication of research results. A total of 17 scientific works on the topic of research, including 7 articles (including 1 foreign article) were published in publications recommended for publication of the main scientific results of the dissertation of the SAC.

Structure and volume of the dissertation. The dissertation consists of an introduction, three chapters covering nine paragraphs, a conclusion, a list of

references, and appendices. It is 154 pages long (except for the list of used literature and appendices).

THE MAIN CONTENT OF THE DISSERTATION

In the **introductory part of the dissertation**, the relevance and necessity of the research topic, the compliance of the research with the main priority directions of the development of science and technology of the republic, the level of research of the researched problem, the connection of the dissertation topic with the research work of the higher education institution where the dissertation is being carried out, the goals and tasks, object and subject of the research, methods, scientific novelty and practical results of research, reliability of research results, scientific and practical significance of research results, their introduction, approval of research results, publication of results, volume and structure of the dissertation are highlighted.

"Theoretical-legal description of the commercialization of intellectual property assets" of the dissertation in the first chapter called legal theories (doctrines) related to intellectual property rights, aspects related to their commercialization, the concept of commercialization of intellectual property assets, civil-legal signs, legal theories on commercialization of intellectual property assets, its economic and legal models are analyzed. The classics used in modern intellectual property law ***(Exhaustion Doctrine , Immaterialgüterrecht , Moral Rights Doctrine, Utilitarianism Theory, Labor Theory, Personality Theory, Social Planning Theory)*** and modern theories ***(Fair Use Doctrine, Instrumentalist theory)*** and their content were analyzed. The expression of these theories in national legislation and their influence on the commercialization of intellectual property assets were discussed.

Also, the researcher analysed the theories on the commercialization of intellectual property assets, and it was revealed that the national legislation is based on ***the Reward Theory.*** Opinions were expressed on the existence of the rules of the ***"Prospect" Theory*** and ***the Commercialization Theory*** in the legislation, as well as the prospects of their more correct reflection in the legislation. Although the dominant theory in the commercialization of intellectual property assets in the USA is the reward theory, special emphasis is placed on its harmonization with the rules of the prospect and commercialization theories. In the conditions of Uzbekistan, the need to adopt legislation such as Bay-Doul stated. In introducing the rules of the commercialization theory, it is justified to rely on the experience of the Japanese law "On supporting the transfer of the results of scientific work related to technology created at universities and other public research institutes to the private sector".

Although it applies to the field of public law, the importance of theories of ***Natural Monopoly*** and ***Misuse Doctrine*** in the commercialization of intellectual property assets is discussed.

While describing the commercialization models of intellectual property assets, their relationship with innovations was also touched. Examples of their expression in legislation are given. The scenarios of ***exclusive rights*** and ***remuneration rights*** for the commercialization of copyright assets are analyzed comparatively, and their differences and advantages are revealed. It is justified by

practical examples that the economic, moral, and legal benefit of using the remuneration rights scenario is higher than the ***exclusive rights scenario*** as a classic scenario.

It can be seen that the researcher touched on the concept of commercialization of intellectual property assets and its civil-legal signs in this chapter. When analyzing the concept of commercialization of intellectual property, he was advised by many lawyers (M.A. Rozhkova, O.A. Ruzakova, A. Demkina, O. Okyulov, Kh. Radzhapov, S. Safoeva, B. Khodzhaev, A.D. Akhmedov) and S.Sudarikov, V. Mukhopad in the economic field used the opinions and views of such scientists as. He also gave examples of definitions developed by the World Intellectual Property Organization and the World Trade Organization. Comparing them with each other, the commercialization of intellectual property is understood as the creation of additional value from an economic point of view and from a legal point of view – as inclusion in civil circulation.

In revealing the civil-legal signs of commercialization of intellectual property assets, not limited to the scientific-theoretical views of the legislation and scientists, but based on the theories in practice in modern intellectual property law. Theories in the field of intellectual property law and their importance in the commercialization of intellectual property assets have been revealed.

The second chapter of the dissertation, ***"Civil-law methods of commercialization of intellectual property assets"*** discusses traditional and non-traditional (modern) forms of commercialization of intellectual property assets, articles of rights to intellectual property assets, and enforcement of these rights. It also analyzes some problems in this regard.

The researcher divided the forms of commercialization of intellectual property assets into traditional and non-traditional forms based on the position of the World Intellectual Property Organization and the main methods of commercialization defined in the national legislation. The researcher approached from the point of view of foreign (USA) and national experience in the realization of goods created using the results of scientific and technic-scientific activities (work performed, services provided) or the use of these results for their own needs. In this case, the use of an intellectual property asset created in the USA for one's own needs is mainly understood as the independent commercialization of this asset by the inventor, while in the conditions of Uzbekistan, it is mainly understood that the development and inventions created with the financing of the enterprise are understood to be used by this enterprise.

During the commercialization of intellectual property assets, the issues of creating an enterprise (organization) based on the rights to it or including them in the charter capital are explained, the dissertationer expresses his opinion based on the results of intellectual activity and the groups of tools equivalent to them. It compares national and foreign practice. The importance of start-ups today gives an idea of the importance of state support in this regard. It gives examples of start-ups developing in the conditions of Uzbekistan and their experience.

The chapter talks about spin-off companies, another legal entity created for the commercialization of intellectual property. According to the dissertation, the rules established for such companies are very close to the norms established for the branch economic society and the dependent economic society in the Civil Code of

the Republic of Uzbekistan. It is justified that such societies are currently operating in Uzbekistan, albeit few, and that there is a need to establish them in higher education and state research institutions.

Non-traditional (modern) forms of commercialization of intellectual property assets, which are now entering Uzbekistan, are becoming popular, and at the same time, they are not used in practice at all. These include engineering, industrial cooperation, technical assistance, intellectual property leasing, securitization backed by intellectual property assets, and paid social property. In this case, the researcher thought about which of these forms of commercialization could be promising for Uzbekistan and which, at the same time, could be unpromising.

In the analysis of the process of pledging the rights to intellectual property assets and focusing on their recovery, the researcher cited the opinions of national and foreign scientists, several models and the experience of foreign countries. In particular, in countries such as China, South Korea, and Japan, lending secured by intellectual property rights has become a public policy tool to encourage citizens to create intellectual property and develop the high-tech sector of small and medium-sized businesses, while in the United States and United Kingdom, real intangible assets it is stated that the market has been formed.

According to the researcher, the norms regarding articles established in the national legislation mainly directed to the article of material objects, and one of the two models of lending secured by intellectual property can be introduced in the conditions of Uzbekistan. The first involves the conclusion of a secured loan agreement between the copyright holder – the pledgor (borrower), and the creditor bank – the pledgee. This model may not have been used in practice due to banks' caution regarding the risks associated with the lack of intellectual property liquidity, as well as the lack of loan guarantee organizations in Uzbekistan, as in the United States. In countries where such a lending system is actively used (USA, Great Britain), investment and insurance companies, as well as other specialized organizations established to solve this problem, act as guarantors.

The second model involves the owner of intellectual property rights giving (assigning) the right to use intellectual property in industry (trade) to the enterprise that is organizing the innovative investment project based on the patent grant agreement. Next, the project organizer applies to the bank for a loan secured by its existing intellectual property rights. The bank issues a loan and transfers the allocated assets to the target company's balance sheet (by sale).

The author divides such assets into three types according to the degree to which recovery can be focused on intellectual property rights:

1. Intellectual property assets that cannot be charged according to the direct instructions of the law are the personal non-property rights of the author and other rights holders *(for example, copyright, publication of a copyrighted work)*;

2. Intellectual property assets with a higher possibility of recovery *(rights registered with competent authorities, confirmed by documents such as patents or certificates)*;

3. Recovery is not directly prohibited by law, but due to the lack of clear legal regulation of the procedure for recovery and documents confirming the right, it is extremely difficult recovering assets *(undisclosed information (know-how), topology of integrated microcircuits, unregistered exposure programs)*.

On the basis of the above, scientific opinions were expressed and proposals for legislation were made regarding the improvement of the mechanisms of the pledge of intellectual property rights and their reco.

The third chapter of the dissertation is entitled ***"Civil-law means of commercialization of intellectual property assets"***. In this, the contractual and legal constructions of commercialization of intellectual property assets, the expediency of choosing them for which form of commercialization, establishing a system of autonomy in commercialization, and the importance of this for the state, its higher education institutions and research organizations are analyzed.

Analyzing the contractual and legal constructions of the commercialization of intellectual property assets, the researcher finds it appropriate to divide these types of contracts into three large groups:

1) Intellectual activity contracts on creation of results *(contract of authorship order, contract of order of creation of results of intellectual activity, contract of R&D);*

2) Agreements on the disposal of rights to the results of existing intellectual activity *(agreement on alienation of exclusive rights, license agreement, trust management agreement, pledge agreement)* ;

3) Agreements regarding the rights to other intellectual property rights *(agreement on the implementation of the rights to the award, agreement on the disposal of the right to obtain a patent)* .

The chapter discusses almost all these types of contracts. It also expresses opinions as to why they should be seen as commercialization contracts.

During the analysis, it was proved that among them, the agreement on the alienation of exclusive rights and the license agreement are universal and the most widely used types of contracts in foreign and national experience. The official statistics provided by the Ministry of Justice of the Republic of Uzbekistan were used to justify the opinions.

Comments are made on all three types of license agreements. The specific features of the contract for the transfer of undisclosed information (know-how) are analyzed. The requirements for contract registration are mentioned.

In the era of digital technologies, the issue of drawing up contracts (smart contracts) on the disposal of rights to intellectual property assets is also analyzed. The dissertation states that the views of scientists in this field are divided into two groups.

The first group of scholars evaluates it as a special contractual-legal form of commercialization – ***merger contracts,*** while the second group of scholars sees it as a method of concluding a contract. In this case, the dissertation supports the opinion of the second group of scientists. The chapter also talks about the role of artificial intelligence in the commercialization of intellectual property. The issues of commercialization of intellectual property created with the help of artificial intelligence were discussed.

In addition, the researcher reveals the relationship between paternalism and autonomy in the commercialization of intellectual property assets in this chapter. While revealing the essence of these two concepts, the researcher justifies the strong paternalism system with several examples from legislation and law enforcement practice.

To avoid the consequences presented in these examples and reduce various obstacles, from strong paternalism to autonomy-oriented, mixed paternalism states that there is a need to transition while not denying the role of the state in creating conditions for regulatory and legal regulation and conflict resolution.

A licensing model aimed at maximizing revenue from licensing patents to leading foreign universities as a prospect of exploiting autonomy from the intellectual property policies of universities and public research institutions, ***the "volume model"*** ensures the number of university innovations and the speed of their implementation. Particular emphasis in the market is placed on the transition to a volumetric model.

Types of volume model, such as "Free Agency" and Internet-Based Approaches to Faculty Loyalty, are given, and opinions are expressed regarding their implementation mechanisms.

Now, the expediency of changing the *"enterprise-university-scientific organization"* cluster system to the ***Research Triangle Model*** has been substantiated. The template of the cluster model, not the number of subjects but their type of change, is based on *"the state-university-industry"* triangle model.

Thoughts were given on the contractual and legal mechanisms of commercialization of intellectual property assets which belonging to universities. In this mechanism, special attention is paid to the importance of defining the intellectual property policy of universities.

CONCLUSION

As a result of the research work on "Civil-legal issues of commercialization of intellectual property assets", the following scientific-theoretical and practical proposals and conclusions were developed:

I. Scientific-theoretical proposals and conclusions:

1. Commercialization of intellectual property assets in the conditions of Uzbekistan is a strongly paternalistic (hard paternalism) regulation; the need to transfer this type of regulation to mixed paternalism, in which aspects of paternalism and in which cases signs of regulation autonomy can be applied using practical examples justified.

2. Theories related to the commercialization of intellectual property assets, such as ***the First Sale Doctrine, the Moral Rights Doctrine, the Theory of Immaterial Goods (Immaterialgüterrecht), the Theory of Utilitarianism, and the Doctrine of Fair Use,*** were scientifically justified in being expressed in the civil legislation of Uzbekistan.

3. It was justified that the legal system of intellectual property commercialization in Uzbekistan is built on the ***Incentive Theory.*** This means that the creator receives the right to the absolute legal use of such an asset in addition to the material benefit or reward for creating a new creative example (invention). Also, there is a need to improve this system based on ***Prospect Theory*** and ***the Commercialization Theory***.

4. If the commercialization of intellectual property assets means the creation of additional value by introducing exclusive rights into economic circulation from

the economic side, from the legal point of view, it was justified that these assets are brought into civil circulation through contractual constructions.

5. It was justified that *market, cluster, and corporate-state (public-private) partnership models are used* for the commercialization of intellectual property assets in the conditions of Uzbekistan.

6. The utility of transitioning from the traditional ***exclusive rights scenario*** of commercialization to the modern ***remuneration rights scenario***, which encourages comprehensive profit from intellectual property, was substantiated with practical examples.

7. The need to move from the cluster model to the ***Research Triangle Model***, which is the current national model of commercialization of intellectual property assets belonging to universities and research organizations, was justified.

8. The legislation defines three main ways of commercializing intellectual property – use for one's own needs, creation of commercial organizations, transfer of property rights to intellectual property to third parties and concluding licensing agreements for the right to use these assets. Using examples, it is substantiated that these methods are traditional forms of commercialization.

9. It was concluded that methods such as *engineering, securitization, strategic alliance, leasing of intellectual property* can be used in the conditions of Uzbekistan as non-traditional forms of commercialization of intellectual property assets.

10. It concluded that in Uzbekistan's conditions, two models of lending secured by intellectual property could be used. The first model involves concluding a secured loan agreement between the author (copyright holder) – the pledgor (borrower) – and the creditor bank – the pledgee. In the second model, the number of parties is equal to three: the author (copyright holder), a company specializing in issuing securities, and a bank *(securitization model).*

11. It was concluded that all intellectual property assets can be divided into three groups, depending on the possibility of recovery within bankruptcy or enforcement proceedings. These are:

intellectual property assets that cannot be levied according to the direct instructions of the law;

intellectual property assets with a relatively high possibility of recovery;

recovery is not directly prohibited by law, but due to the lack of clear legal regulation of the procedure for recovery and the documents confirming the right, it is extremely difficult to recovery.

II. The following suggestions and conclusions legislation based on the results of the study:

1. In connection with the inclusion of rights to intellectual property assets in the authorized fund, it is proposed to supplement the draft of the new version of the Civil Code with the following articles:

"Article 58[1]. Shares in the authorized fund (authorized capital) of economic companies and societies

A participant's share in a business company or society's property can be money, things, shares (shares) in the authorized fund (authorized capital) of other business companies and societies, or securities. Such a share can be in the form of

exclusive rights with monetary value, rights under license agreements, and rights to intellectual property assets, unless otherwise provided by law.

The law or the founding documents of the business company or society may specify the types of property specified in the first part of this article, but these cannot be included in the payment of shares in the authorized fund (authorized capital) of the business company or society".

2. In order to improve the legal aspects of the pledge of exclusive rights, it is proposed to supplement the draft of the new edition of the Civil Code with the following article:

"Article 302[1]. Pledge of exclusive rights

A pledge may cover the exclusive rights to the results of intellectual activity and the means of reflecting the private signs of goods, works, and services of the participants in civil transactions specified in Article 1079 of this Code.

This Code and other legal documents do not allow the transfer and alienation of exclusive rights to certain intellectual property assets from the owners to other persons.

The state registration of the pledge of exclusive rights is carried out in accordance with the provisions of Section IV of this Code.

In accordance with the agreement on the pledge of exclusive rights to the result of intellectual activity or to the means reflecting private signs of the participants of civil transactions, goods, works, and services, the legislator, during the validity period of this agreement without the consent of the pledgee, such result or has the right to use and dispose of the tool. Except for cases of alienation of exclusive rights. Unless otherwise stipulated in the contract, the pledgee has no right to alienate the exclusive right without the consent of the pledger".

3. It is proposed to introduce the following changes and additions to the draft of the new edition of the Civil Code in order to improve the legal mechanisms of recovery of rights to intellectual property assets:

"Article 1084. Transfer of exclusive rights to other persons without contract

Property rights belonging to the owner of exclusive rights to an asset of intellectual property, unless otherwise provided by this Code or another law, may be fully or partially transferred by the owner of the right to another person without entering into a contract, including exclusive rights by legal succession (inheritance and when the legal entity – the right holder is reorganized) and ***the recovery is directed to the property rights of the right holder,*** *it is transferred to another person.*

Article 1091[1]. Focusing recovery on exclusive rights to intellectual property assets and rights to use them under a license agreement

It is not allowed to focus on recovering exclusive rights to intellectual property assets belonging to the author (right holder), except in cases where the recovery is made within the framework of an article agreement concluded by the author (right holder) and the subject of the agreement is the exclusive right to a specific asset of intellectual property belonging to him.

If there is no other procedure specified in the legal documents and the contract, the recovery is focused on the claims of the author (right holder) against

other persons under full or partial transfer agreements and license agreements, as well as income from the use of intellectual property assets. possible

The provisions of this article apply to the author's (right holder) heirs, their heirs, and others during the exclusive right's validity period.

In the event that the collection is focused on the right to use the intellectual property belonging to the licensee and is put up for sale at an open auction, the author (right holder) is given a preferential right to purchase it".

4. Amending Article 24, Part 2, and Clause 3 of the Law of the Republic of Uzbekistan "On Innovative Activities" as follows:

"transfer of property rights to intellectual property assets to third parties and grant of the right to use these assets by concluding license agreements based on royalty allocations, including their provision on the condition of subsequent commercialization by the recipient of these rights, and by ***other means".***

III. Proposals and recommendations for improving law enforcement practices:

1. It is proposed to insert paragraph 21^1 in the following wording into the decision No. 19 of June 23, 2023 of the Plenum of the Supreme Court of the Republic of Uzbekistan "On some issues of consideration of cases related to intellectual property":

"21^1 . If the decision on the inclusion of intellectual property in the authorized fund or the founding agreement on the establishment of a legal entity stipulates all the terms of the Civil Code that must be included in the agreement on the alienation of exclusive rights or in the license agreement, in such cases, courts should pay attention to the fact that a separate civil legal contract (exclusive right alienation or license contract) defining this fact is not required. In this case, the state registration of these rights can be carried out at the request of the founder, on the condition that the decision on the establishment of a company or society (or its relevant part) is presented. it should be taken into account that there are exceptions regarding the transfer from owners to other persons".

2. As part of the dissertation research, contract forms aimed at the commercialization of a number of intellectual property assets were developed. These contract forms can be used in the work of law enforcement entities.

3. It is desirable to widely apply the provisions of the WIPO model statute on intellectual property policy for universities and research institutions in the activities of higher education institutions. The existence of a policy in the field of intellectual property for universities and research institutions is important for the commercialization of intellectual property assets created directly in the higher education institution. For this reason, examples of such policies and their applications were developed and attached to the text of the dissertation, based on the experience of the WTO and foreign countries.

НАУЧНЫЙ СОВЕТ DSc.07/30.12.2019.Yu.22.01 ПО ПРИСУЖДЕНИЮ УЧЕНЫХ СТЕПЕНЕЙ ПРИ ТАШКЕНТСКОМ ГОСУДАРСТВЕННОМ ЮРИДИЧЕСКОМ УНИВЕРСИТЕТЕ

ТАШКЕНТСКИЙ ГОСУДАРСТВЕННЫЙ ЮРИДИЧЕСКИЙ УНИВЕРСИТЕТ

ТОШКАНОВ НУРБЕК БАХРИДДИНОВИЧ

ГРАЖДАНСКО-ПРАВОВЫЕ ВОПРОСЫ КОММЕРЦИАЛИЗАЦИИ ОБЪЕКТОВ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ

12.00.03 – Гражданское право. Предпринимательское право. Семейное право. Международное частное право

АВТОРЕФЕРАТ
диссертации доктора философии (PhD) по юридическим наукам

Ташкент – 2024

Тема диссертации доктора наук (Doctor of Philosophy) зарегистрирована Высшей аттестационной комиссией при Министерстве высшего образования, науки и инноваций Республики Узбекистан за № B2023.3.PhD/Yu1147

Диссертация выполнена в Ташкентском государственном юридическом университете.

Автореферат диссертации размещен на трех языках (узбекском, английском, русском (резюме)) на веб-сайте Научного совета (www.tsul.uz) и Информационно-образовательном портале «Ziyonet» (www.ziyonet.uz).

Научный руководитель:	**Ходжаев Бахшилло Камалович** доктор юридических наук, профессор
Официальные оппоненты:	**Базаров Сардор Сахибжанович** доктор юридических наук, профессор
	Ахмаджанов Бахтияржан Усубжанович кандидат юридических наук
Ведущая организация:	**Правоохранительная академия Республики Узбекистан**

Защита диссертации состоится «21» сентября 2024 года в 12:00 на заседании Научного совета DSc.07/30.12.2019.Yu.22.01 при Ташкентском государственном юридическом университете (Адрес: 100047, г. Ташкент, улица Сайилгох, 35. Тел.: (99871) 233-66-36; факс: (99871) 233-37-48; e-mail: info@tsul.uz).

С диссертацией можно ознакомиться в Информационно-ресурсном центре Ташкентского государственного юридического университета (зарегистрировано за № 1288). (Адрес: 100047, г. Ташкент, ул. Амира Темура, 13. Тел.: (99871) 233-66-36).

Автореферат диссертации разослан 6 сентября 2024 года.

(протокол реестра №52 от 6 сентября 2024 года).

И.Р. Рустамбеков
Председатель Научного совета по присуждению ученых степеней, доктор юридических наук, профессор

Д.Ю. Хабибуллаев
Научный секретарь Научного совета по присуждению ученых степеней, доктор юридических наук, профессор

С.С.Гулямов
Заместитель председателя Научного семинара при Научном совете по присуждению ученых степеней, доктор юридических наук, профессор.

ВВЕДЕНИЕ (аннотация диссертации доктора философии (PhD))

Цель исследования – разработка предложений и рекомендаций, направленных на гражданско-правовое регулирование коммерциализации объектов интеллектуальной собственности в Узбекистане.

Объектом исследования является система правоотношений, связанных с гражданско-правовым регулированием коммерциализации объектов интеллектуальной собственности в Узбекистане.

Научная новизна исследования заключается в следующем:

обосновано, что под коммерциализацией объектов интеллектуальной собственности понимается введение этих объектов в гражданский оборот с использованием различных форм договоров в целях получения прибыли и взыскание является одним из оснований перехода исключительных прав к другому лицу в случаях, когда взыскание направлено исключительные права;

обосновано, что есть широкий спектр способов коммерциализации объектов интеллектуальной собственности и когда права на объекты интеллектуальной собственности включены в виде доли в уставном фонде, размер этой доли должен быть ограничен, а также требование обязательной оценки, необходимость соблюдения специального правового режима при коммерциализации разработок, содержащих сведения, входящие в категорию коммерческой тайны;

обосновано, что личные неимущественные права автора не могут быть коммерциализированы, что эти права в любом случае принадлежат ему, что такие права сохраняются даже в случае перехода имущественных прав к другим лицам;

обосновано, что принудительная лицензия должна выдаваться при условии уплаты пошлины по установленной ставке, в выдаче принудительной лицензии должны быть заинтересованы не только лицо и общество, но и государство.

Внедрение результатов исследования. Научные результаты научно-исследовательской работы были использованы в следующем:

предложение о том, что под коммерциализацией объектов интеллектуальной собственности понимается введение этих объектов в гражданский оборот с использованием различных форм договоров в целях получения прибыли и случаи, когда взыскание направлено на исключительные права, что являются одним из оснований перехода этих прав к другому лицу, были использованы при формировании статьи 1084 и статьи 1091 проекта новой редакции Гражданского кодекса Республики Узбекистана *(акт Министерства юстиции Республики Узбекистан от 11 июля 2024 года № 27/1-30)*. Данное предложение направлено на совершенствование правовой базы коммерциализации объектов интеллектуальной собственности и взыскание прав на них;

предложение о том, что есть широкий спектр способов коммерциализации объектов интеллектуальной собственности и когда права

на объекты интеллектуальной собственности включены в виде доли в уставном фонде, размер этой доли должен быть ограничен, а также требование об обязательной оценке и необходимости соблюдения особого правового режима к коммерциализации разработок, содержащих сведения составляющие коммерческую тайну были использованы при формировании частей 2-4 статьи 318 проекта Предпринимательского кодекса Республики Узбекистан *(Акт Министерства юстиции Республики Узбекистан от 11 июля 2024 года № 27/ № 1-31)*. Внедрение данного предложения послужило совершенствованию законодательства по определению круга способов коммерциализации объектов интеллектуальной собственности и о включении прав на эти объекты в качестве доли в уставный фонд, а также о необходимости соблюдения особого правового режима коммерческой тайны;

предложение о том, что личные неимущественные права автора не могут быть коммерциализированы, что эти права принадлежат ему в любом случае, что такие права сохраняются даже в случае перехода имущественных прав к другим лицам было использовано при формировании 2 абзаца пункта 16 постановления Пленума Верховного Суда Республики Узбекистан «О некоторых вопросах рассмотрения дел, связанных с интеллектуальной собственностью» от 23 июня 2023 года № 19 *(Акт Верховного суда Республики Узбекистан от 27 мая 2024 года № 08/458-24)*. Это предложение послужило совершенствованию практики применения законодательства, касающегося личных неимущественных прав;

предложение о том, что принудительная лицензия должна осуществляться при условии уплаты пошлины в установленном размере, что в выдаче принудительной лицензии должны быть заинтересованы не только отдельные лица и общество, но и государство было использовано при разработке пункт 2 статья 1 Закона Республики Узбекистан № ЗРУ–908 «О внесении изменений и дополнений в некоторые законодательные документы Республики Узбекистан, обеспечивающие гармонизацию национального законодательства Республики Узбекистан с соглашениями Всемирной торговой организации» от 15 февраля 2024 года (Статья 11^1, включена в Закон Республики Узбекистан «Об изобретениях, полезных моделях и промышленных образцах» № 1062-XII, от 6 мая 1994 г.) *(акт Института парламентских исследований при Законодательной Палаты Олий Мажлиса Республики Узбекистан от 28 мая 2024 года № 3/08-93)*. Внедрение данного предложения послужило созданию правовой основы для выдачи принудительной лицензии на объекты промышленной собственности.

Структура и объем диссертации. Диссертация состоит из введения, трёх глав, объединяющих 9 параграфов, заключения, список использованной литературы и приложений. Объем диссертации составляет 154 страниц.

E’LON QILINGAN ISHLAR RO‘YXATI
LIST OF PUBLISHED WORKS
СПИСОК ОПУБЛИКОВАННЫХ РАБОТ

II bo‘lim (I part; I часть)

1. Toshkanov N.B. Innovatsion taraqqiyot va huquqlarning ko‘chishi // “ODILLIK MEZONI”. № 1. 2022. -B. 8-11 (12.00.00; № 21).
2. Toshkanov N.B. Universitetlar intellektual faoliyati natijalarini tijoratlashtirishni tashkiliy-huquqiy ta’minlash // Qonunchilik muammolari axborotnomasi. № 1. 2022. -B. 46-49 (12.00.00).
3. Toshkanov N.B. Bilimlar iqtisodiyoti va intellektual mulk: tijoratlashtirishning ba’zi huquqiy jihatlari va muammolari // Ijtimoiy-gumanitar fanlarning dolzarb muammolari. № 12/2 (3). 2023. -B. 210-216 (12.00.00).
4. Toshkanov N.B. Konstitutsiya va intellektual mulk: tartibga solish bo‘yicha yondashuvlar // “ODILLIK MEZONI”. № 11. 2023. -B. 27-29 (12.00.00; № 21).
5. Toshkanov N.B. Intellektual mulkning konstitutsiyaviy-huquqiy himoyasi va uning ahamiyati. // Yurisprudensiya. Maxsus son. 2023. -B. 46-57 (12.00.00; № 15).
6. Toshkanov N.B. An’anaviy bilimlar va ularning huquqiy ifodasi bo‘yicha ba’zi masalalar // Yurist axborotnomasi. № 6. 2023. -B. 61-67 (12.00.00).
7. Toshkanov N.B. Specific characteristics of commercialization of intellectual property assets of universities and state scientific research institutions // International Journal of Law, Justice and Jurisprudence 2024; 4(1): pp. 228-235.

II bo‘lim (II part; II часть)

8. Toshkanov, N. (2024). License Agreements and Their Benefits // “Theoretical Aspects in the Formation of Pedagogical Sciences” International scientific-online conference (Ch. 3, Volume 14, pp. 100–104). URL: Zenodo. https://doi.org/10.5281/zenodo.12771187.
9. Toshkanov N.B. Sanoat kooperatsiyasi – intellektual mulkni tijoratlashtirish usuli sifatida // “Kooperatsiyalarning huquqi asoslarini mustahkamlash – ijtimoiy iqtisodiy rivojlanish omili sifatida” mavzusidagi xalqaro konferensiya materiallari to‘plami (2022-yil 14-yanvar). Toshkent – HSTI, 2022. - B. 75-85.
10. Toshkanov N.B. Iqtisodiyotga innovatsiyalarni keng joriy qilish, sanoat korxonalari va ilm-fan muassasalari kooperatsiyacining huquqiy asoslarini takomillashtirish // “Yuridik fan va huquqni qo‘llash amaliyotining dolzarb muammolari: odil sudlov va yuridik yordam imkoniyatlari” mavzusidagi xalqaro ilmiy amaliy konferensiya materiallari to‘plami. Toshkent – HMQA, 2022. -B. 348-356.
11. Toshkanov N.B. Adabiyot, san’at namunalariga nisbatan mutlaq huquqlarning merosiyligi va ularni tijoratlashtirish: G‘afur G‘ulom ijodi misolida // “G‘afur G‘ulom ijodida milliy va umuminsoniy g‘oyalar uyg‘unligi / Harmony of national and universal ideas in the work of Gafur Gulyam / Гармония

национальных и общечеловеческих идей в творчестве Гафура Гуляма” // Xalqaro ilmiy-amaliy konferensiya materiallari to‘plami. – T.: TDYU, 2023. - B. 212-224.

12. Toshkanov N.B. Omonboy Oqyo‘lov – intellektual mulk obyektlarini tijoratlashtirish milliy mexanizmining ijodkori // O‘zbekistonda xizmat ko‘rsatgan yurist, yuridik fanlar doktori, professor Omonboy Oqyulov tavalludining 70 yilligi munosabati bilan Toshkent davlat yuridik universitetida “Fuqarolik qonunchiligini rivojlantirish istiqbollari” mavzusida o‘tkazilgan xalqaro ilmiy-amaliy konferensiya materiallari to‘plami – T.: ТДЮУ, 2023. – B. 20-29.

13. Toshkanov N.B. Xizmat asarlariga bo‘lgan mualliflik huquqi va tijoratlashtirishdan olingan daromadlarni taqsimlash tartibi // “O‘zbekistonda mehnat huquqini rivojlantirishning dolzarb masalalari” mavzusidagi xalqaro ilmiy konferensiya materiallari to‘plami. – Toshkent: TDYU, 2023. – B. 154-162.

14. Toshkanov N.B. Universitetlar va intellektual mulk: intellektual mulkni yaratish siyosatini qanday tartibga solish kerak? // “Fan va ta’lim integratsiyalashuvida barqaror rivojlanish maqsadlari” mavzuida xalqaro ilmiy-amaliy konferensiya materiallari to‘plami. – Toshkent: O‘zMU, 2023. – B. 143-150.

15. Toshkanov N.B. Ijod erkinligi va uning natijalarining konstitutsiyaviy muhofazasi – intellektual mulkni tijoratlashtirish sari muhim qadam // Сборник материалов международного круглого стола по теме: «Роль Всеобщей декларации прав человека в конституционных реформах Нового Узбекистана: опыт Центральной Азии и Европейского Союза». – Т.: ТДЮУ, 2023. -С. 149-155.

16. Toshkanov N.B. Intellektual mulk obyektlarini tijoratlashtirishda huquqlarni begonalashtirish shartnomalarining afzalliklari // “Taraqqiyot tadqiqotlari: muammo, taklif va islohotlar” mavzusidagi Respublika ko‘p tarmoqli konferensiya materiallari to‘plamining 19-soni. -B. 41-45. URL: https://inashr.uz/index.php/rid

17. Toshkanov N.B. Innovatsiyalarni qo‘llab-quvvatlash konstitutsiyaviy ifoda topishi zaruriyati masalasi: xorijiy tajriba va tahlil // “O‘zbekiston Respublikasi Konstitutsiyasi – inson qadrini ulug‘lash, erkin va farovon hayotimiz kafolati” mavzusidagi respublika ilmiy konferensiya materiallari to‘plami. – Toshkent: TDTU, 2022. – B. 173-176.

Avtoreferat TDYU Yuridik fanlar Axborotnomasi jurnali tahririyatida tahrirdan o‘tkazilib, o‘zbek, ingliz va rus tillaridagi matnlar o‘zaro muvofiqlashtirildi.

Bosishga ruxsat etildi: 05.09.2024.
Bichimi: 60x84 1/16. “Times New Roman” garniturada 14 raqamli bosma usulida bosildi.
Shartli bosma tabog‘i 3. Adadi: 100. Buyurtma: № 74

100060, Toshkent sh., Y.G‘ulomov ko‘chasi, 74.
Tel: +998 90 9722279, www.tiraj.uz

“TOP IMAGE MEDIA”
bosmaxonasida chop etildi.