UDC 3 39.13
JEL D520, O340

Bazylevych V.D., Doctor of Economics, Professor
Taras Shevchenko University of Kyiv

COMPETITIVE RELATIONS IN THE INTELLECTUAL PROPERTY MARKET: CHARACTERISTICS OF FORMATION AND MANIFESTATION

Prevailing trends in the transformation of competitive relations are considered with a view on post-industrial alterations related to the intensification of production and exchange of information goods.

The article examines a specific character of the formation and development of competition in the market of intellectual property objects and exposes a contradictory nature of the processes of institutionalization of competitive relations in the field of intellectual property. The study substantiates the need for balancing competition and monopoly in the intellectual property market and suggests improving the institutional and organizational regulation of the intellectual property market at the national and global levels in order to effectively realize its competitive potential.

***Key words**: information economy, intellectual property, competitive relations, concoperation, the market of objects of intellectual property.*

Problem statement. Establishment and development of the information economy are considered as complex and contradictory processes that change the system of present social and economic interaction, complicate and modify essentials and forms of competitive relations. Emerging and expansion of the intellectual property market that introduces creative products into economy exacerbate the problem of protecting rights of the creators of intellectual products and setting out conditions for fair economic competition among them. We talk about the need to revise traditional approaches to the analysis of the competitiveness of economic agents, principles and tools of the state competition policy, considering that current institutional and organizational environment of the intellectual property does not go in many ways with the nature of the information society, which produces the 'new principles of social and technological organization.' [1, c. CXX-CXXI].

These issues are of particular relevance to the current stage of innovative modernization of the Ukrainian economy. Serious contradictions are observed in protection of the rights and economic interests of the innovation process participants, institutional and organizational support for the efficient operation and development of the intellectual property market, coordination of competition policy and guiding principles in protecting intellectual property rights [2, .601-630]. These problems cannot be solved without an in-depth analysis of the specifics of intellectual activity, understanding of the complex socio-economic nature of the intellectual property market, characteristics of the deployment and development of the competitive relations.

Review of recent research. Development and alteration of competitive relations throughout evolution of the market economy have been exposed by K. Arrow, J. Bean, S. Brue, L. Walras, J. Galbraith, A. Jalil, J.Keynes, J. Kirtsner, J. Clarke, A. Marshall, E. Mason, G. Minza, V. Oyken, V. Pareto, M. Porter, J. Robinson, A. Smith, J. Stiglitz, J. Tirol, O. Williamson, F. Hayek, E. Chamberlin, J. Schumpeter including the Ukrainians G. Filiuk, V. Heits, A. Hrytsenko, A. Ignatiuk, and B. Kvasniuk. Some aspects of the intellectual

property commercialization and development of competitive relationships in the relevant market have been explored by D. Bell, P. Drucker, C. Kelly, B. Martin, F. Machlup, S. Mey, P. Meinhard, D. North, Y. Sakai, D. Sawyers, R. Stillerman, H. Fox.

The recognized international organizations like the World Bank, the United Nations Conference on Trade and Development (UNCTAD), the United Nations Economic Commission for Europe (UNECE), the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), pay close attention to these issues and over the past decade, WIPO experts prepared and published a number of studies in this field: Intellectual property and competition as complementary policies: a test using an ordered probit model, (2007), Interaction of Agencies Dealing with Intellectual Property and Competition Law: Summary of Replies of Member States (2011), Compulsory Licenses Granted by WIPO Member States to Address Anti-Competitive Uses of IP Rights (2011), The Interface between Exhaustion of IP Rights and Competition Law (2012), Analysis of the Economic/Legal Literature on the Effects of IP Rights as a Barrier to Entry (2012), Study on Copyright, Competition and Development (2013), Survey on Technology Transfer Agreements and Antitrust (2013), Study on Patent Pools and Antitrust - A Comparative Analysis (2014), etc. [3].

Unexplored aspects of the problem. Notwithstanding a considerable number of studies into functioning and development of the intellectual property market its characteristics of establishing competitive relations and their regulation at the national and global levels have not received sufficient coverage. The priority is commonly given to the legal aspect, while economic content of the establishing relations has not been closely examined. One of the most challenging and controversial questions is the characterization of the competitive relations in the market of intellectual property, taking into account specifics of the information society, which, on the one hand, strives to remove barriers to the spread of new ideas and technologies and on the other one, searches for effective mechanisms to stimulate and protect interests of the creators of innovative products.

Target setting: to elucidate the establishment and development of contesting relations in the market of intellectual property and on this basis justify proposals for improving the institutional and organizational ordering of the market to effectively realize its competitive potential.

Research findings. It is generally recognized that under conditions of intensification of production and exchange of information goods, a transformation of competitive relations takes place, namely:

– the competitive advantages of economic agents increase as a result of possession of intangible assets to which researchers include intellectual property objects, entrepreneurial abilities, the ability to think non-standard, make quick decisions, experiment, work in a team, be committed to a common cause, etc .

– the monopolistic position of economic agents in the information economy is less stable, since the competitors who invest in knowledge are able to promptly innovate, find perfect solutions that can provide an acceptable profit;

– the role and importance of ‘collective’ competitiveness, based on the coordination of interests and strategies of economic actors and the development of their network interactions grow. Against the backdrop of unrelenting competition, as an integral attribute of the market economy, the tendency towards cooperation increases, because of the need

to establish global standards, universalization of technologies and products that modify the strategies to contest. As a reflection of these objective processes is appearance of the neologism ‘concoperation’, which combines two opposing concepts (‘competition’ and ‘cooperation’) and is interpreted as competitive cooperation or co-competition;

- the openness and intellectual intensity of the information economy weaken monopolism in the markets of new goods and services as the emphasis is shifted there from a devastating competitive struggle to a creative competition for new production arrangements and forms of interaction;

- expansion of information technology, reduction of market barriers, and transparency of e-business lead to the conditions when small innovative companies, which are flexible and dynamic, can compete against powerful and established firms.

In 2017 Cornell University (USA), the European Institute of Business Administration (France) and the World Intellectual Property Organization prepared a Global Innovation Index report, where Switzerland, Sweden, the Netherlands, the USA and the UK were ranked the top innovation-driven countries. European countries occupied 15 of the 25 leading positions in stimulating IP development and protection of IP rights. Highly qualified professionals were reported to be the largest share in the total employment of these countries; there were effective cooperation of universities and R&D in industries and steady increase of patent applications and high-quality research and engineering publications [4.]

A characteristic feature of the European Union economy is formation and development of the modern market of intellectual property objects, through which products of creative intellectual work are introduced into economic circulation and ensure active participation of the national economies in international exchange of IP products. This is confirmed by the fact that the growth of the volume of trade in intellectual property in European countries currently exceeds the growth rates of traditional goods markets. According to the European Patent Office, the IP market provided 56 million jobs or 26 percent of employment in EU countries in 2015, and generated 4.7 trillion Euros of added value, which makes up 38.5 percent of the EU GDP [5, p. 8–10.]

From the viewpoint of formation and development of competitive relations, the character of the IP market is known to be conditioned by:

(1) the sort of goods in this market, namely: the objects of sale and purchase are products of the natural monopoly of the intellectuals. The products’ value is formed on the basis of the individual costs of creative mental work. It is also important to take into account that the market of objects of intellectual property puts on sale and purchase not the products of intellectual activity, but the rights to them, which necessitates creation of an effective system of specification and protection of the latter

(2) specificity of supply and demand in the intellectual property market, namely the supply of intellectual property is largely determined by the creators' potential and relatively stable not only in the short but also in the long term. The demand for intellectual property is characterized by low elasticity and has a derivative character, that is, it depends on the demand for products and services produced with their participation.

The indicated conditions determine specific character of competitive relations in the market of objects of intellectual property, namely:

– the market is characterized by imperfect (monopolistic) competition and the receipt of super-profits in the short term. The monopoly of the market subjects is conditioned by the

structure of exclusive rights involved in circulation and acquires fundamental characteristics of a commodity market

– non-price competition owing to the uniqueness of intellectual goods, plays a decisive role in the market of IP objects. The main value of intellectual property in the market makes possible monopolization of production of new goods and services authorized by the society of high-quality consumer properties

– the market of IP objects is formed and developed under decisive influence of new information technologies and means of communication, which results in its structural division into closely interconnected legal and shadow markets. The 2011 report of the World Intellectual Property Organization shows that the growth rate of world revenue from royalties and licensing fees increased from $2.8 trillion in 1970 to $27 billion in 1990 and approximately to $180 billion in 2009. At the same time, according to the Organization for Economic Cooperation and Development (OECD), the total cost of counterfeit and pirated goods sold on the international market in 2008 was $ 200 billion, and in 2009 this figure reached 250 billion, and in 2010 it increased to 600 billion US dollars (about 7 percent of the volume of world trade) [6.]

In this situation, the need for institutional and organizational regulation of the IP market, both at the national and global levels, is exacerbated for the effective realization of its competitive potential. At the same time it is necessary to take into account the unity and contradictory nature of the modern institutional and organizational arrangement of competitive relations and relations in the field of intellectual property. In this context, the position of the English researcher C. May, who justifies legitimacy of intellectual property, is worthy of attention:

(1) any natural or legal person who contributes to the creation of an intellectual property and who uses this property as an 'instrument' to improve nature or society (the 'instrumental' way of justifying intellectual property in the author's terminology) may claim to own intellectual property

2) unlike other types of property, the intellectual property of the Creator is a 'continuation' of the free personality, an expression of his/her 'essence' (the way to justify intellectual property, which takes into account the 'self-development' of an individual)

3) the intellectual property can be confiscated from an individual in favor of society as a whole, if the interests of morality and public benefit so demand (the 'ethical' way of justifying intellectual property) [9.]

In the context of the problem under consideration, the studies of UN experts are worthy of attention, who believe that IP law and competition law are of different purposes, since the former creates temporary monopolies, while the latter protects the market from monopolism. However, the in-depth analysis of the problems in building competitive relations in the IP market allows concluding that these institutions do not contradict but complement each other, since competition policy and intellectual property rights protection policy promote innovative development of the economy, accelerating economic growth and increasing consumer welfare [7.]

According to WIPO experts, intellectual property allows consumers to choose between competing entrepreneurs and the products and services they offer. Thus, by its nature, intellectual property contributes to competition insofar as it protects the unique intangible assets of commercial enterprises. Without this, less effective producers and suppliers would

have been able to increase their customer base by copying innovative products and services whose producers would lose incentives for innovative development to the detriment of society as a whole [4].

However, it should be borne in mind that protection of IP rights in certain circumstances may hinder competition. As already noted, the main value of intellectual property in the market of the relevant objects is that it provides legitimate monopolization of the production of new consumer goods and services with high-quality properties. This means that protection of IP rights creates special conditions for the owner of the rights, which, from the viewpoint of the anti-monopoly regulator, can be defined as the desire to gain market power or a dominant position in the market. Under these circumstances, the IP policy that focuses on protecting the owner of the rights and supports a legitimate monopoly on the results of intellectual work, and antitrust policy aimed at ensuring fair competition and preventing the abuse of a monopoly position may conflict with one another. This is especially noticeable in the case where IP rights are used in unfair business practices that restrict competition by preventing access to markets [8.]

Conclusions. Thus, the transformation of competitive relations in the conditions of post-industrial renovations, related to the intensification of production and exchange of information goods, exacerbates the need for a balance between competition and level of monopoly power in the IP market. The formation of a sound economic policy in this area is impossible without the cooperation of the structures involved in protection of intellectual property and the bodies watching over competition. Their common task is to find a compromise between priorities of the competition law and imperatives of intellectual property protection. Important steps should be:

– further improvement of the legislation on protection of the IP rights to minimize chances of abusing these rights, prevent ‘closing down’ of the markets, limit access of competitors to them, which undermines incentives for business to innovate

– improvement of the system of copyright and protection of IP rights, prevention of unauthorized use of intellectual property, continuous monitoring and evaluation of potential anticompetitive effects of mergers and acquisitions related to intellectual property

– preventing infringement of IP rights, strengthening control over the use of these rights that it did not hinder the development of markets in complementary or substitute products

– creation of the necessary prerequisites for operation of the civilized IP market, introduction of an effective mechanism for commercialization of the intellectual property and new forms of its use (franchising, transfer for loan, option agreements, leasing contracts), regulatory support for valuation of intangible assets

– information support for activities in the IP field, creation of non-governmental organizations in the domain of protection of IP rights, promotion of public initiatives of the right holders interested in copyrighting and protecting their rights, formation of the legal culture, respect for rights over IP objects.

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Базилевич В.Д., д.е.н., професор
КНУ імені Тараса Шевченка

КОНКУРЕНТНІ ВІДНОСИНИ НА РИНКУ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ: ОСОБЛИВОСТІ ФОРМУВАННЯ ТА РЕАЛІЗАЦІЇ

Розглянуто основні напрями трансформації конкурентних відносин за умов постіндустріальних перетворень, пов'язаних з інтенсифікацією виробництва й обміну інформаційних благ.

Розкрито специфіку формування та розвитку конкуренції на ринку об'єктів інтелектуальної власності. Висвітлено суперечливість процесів інституціоналізації конкурентних відносин у сфері інтелектуальної власності. Обґрунтовано необхідність збалансування конкуренції та монополізму на ринку інтелектуальної власності. Сформульовано пропозиції щодо удосконалення інституційно-організаційному впорядкування ринку об'єктів інтелектуальної власності на національному та глобальному рівнях з метою ефективної реалізації його конкурентного потенціалу.

Ключові слова: *інформаційна економіка, інтелектуальна власність, конкурентні відносини, конкуперація, ринок об'єктів інтелектуальної власності.*

Виктор Базилевич, д.э.н., профессор
КНУ имени Тараса Шевченко

КОНКУРЕНТНЫЕ ОТНОШЕНИЯ НА РЫНКЕ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ: ОСОБЕННОСТИ ФОРМИРОВАНИЯ И РЕАЛИЗАЦИИ

Рассмотрены основные направления трансформации конкурентных отношений в условиях постиндустриальных преобразований, связанных с интенсификацией производства и обмена информационных благ.

Раскрыты специфические особенности формирования и развития конкуренции на рынке объектов интеллектуальной собственности, а также противоречивость процессов институционализации конкурентных отношений в сфере интеллектуальной собственности. Обоснована необходимость сбалансирования институционально-организационного обеспечения конкуренции и монополизма на рынке интеллектуальной собственности. Сформулированы предложения по совершенствованию институционального упорядочения рынка объектов интеллектуальной собственности на национальном и глобальном уровнях с целью эффективной реализации его конкурентного потенциала.

Ключевые слова: *информационная экономика, интеллектуальная собственность, конкурентные отношения, конкуперация, рынок объектов интеллектуальной собственности.*