

## Protection of Intellectual property rights in the Republic of Kazakhstan: the background and challenges

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**Abstract.** Intellectual activity of person in various spheres of spiritual and material perception is taking on significance in conditions of rapid development of the scientific-technical progress in contemporary world. Their circulation complies with common rules of market. However, the character of rights and duties, the means of their implementation and protection bear own peculiarities. «Intellectual capital» is becoming significant in modern economy. This article identifies specific challenges and strategies of the Republic of Kazakhstan engaged in industrial-innovative development through the modification of legislation in the sphere of intellectual property rights.

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### Introduction

The development of the scientific-technical progress and protection of intellectual property have special significance for post-Soviet countries possessing rich natural resources, including Kazakhstan. According to official data, 99 elements are found, 70 elements are explored out of 110 elements of Mendeleev table. But, only 60 elements are extracted and used [1].

Kazakhstan is one of the richest countries on oil, gas, titanium, magnesium, tin, uranium, gold and other non-ferrous metals reserves. In accordance with assessment of experts, explored mineral wealth is estimated at approximately 10 trillion USD.

In world scale, Kazakhstan is already the largest producer of wolframium and ranked first for its reserves, second - for chromium and phosphorus ore, fourth - for lead and molybdenum, eighth - for general reserves of iron ore (16,6 billion tons) after the Brazil, Australia, Canada, the USA, India, Russia and Ukraine.

In the year of the collapse of the Soviet Union (1991) 90% of chrome ore, 26% of copper, 33% of lead and zinc, 38% of wolframium of former Soviet Union remained in Kazakhstan. It is important to note that, 82% of barites, 65% of phosphate, 29% of molybdenum, 22% of bauxite, 20% of asbestos, 13% of manganese, 12% of coal reserves were in share of Kazakhstan in former Soviet Union.

The worldwide practice proves that country should participate in the maintaining new development and innovation in terms of ultimate effectiveness of process. The long-term scientific-industrial policy of country, institutional structure and improvement of legislation in the sphere of

intellectual property play decisive role in the development of intellectual capital. The results of intellectual activity are powerful instrument of economic growth and creation new material values, that still does not used optimally in all countries, especially in countries of developing world.

The governing authorities of Kazakhstan understand it clearly. The Republic of Kazakhstan was one of the first countries among Commonwealth of Independent States (CIS), which have formed contemporary model of market economy based on private property, free competition and transparency principles. Over 160 billion USD of foreign investment has been attracted and favorable conditions have been formed for business activity. Currently the lowest tax rates amongst CIS countries - 12 % applied for business in Kazakhstan.

Taking into account the necessity of rapid reform of economy's structure with the goal to shift from raw orientation, Kazakhstan has adopted the State program of accelerated industrial-innovative development of the Republic of Kazakhstan in 2010 and has created National innovation fund (NIF) and technological park's network. The National innovation fund provides financial support for perspective projects in economic terms and technological parks create "incubator conditions" for their implementation.

It gave the positive results. In accordance with the results of the Global Competitiveness Report 2013-2014 [2], Kazakhstan ranked 50th with 4.41 average score. In compare with previous years there are improvements in own positions: 2011 - 72nd place, 2012 - 51st place. At the same time, Kazakhstan has moved to the group of countries with a higher level of development. The effectiveness and

innovative development factors play significant role in such level. Apart from Kazakhstan, such as countries: the Brazil, Turkey, Hungary, Malaysia, Bahrain, Chile and others are also in this group.

However, according to the results of the Global Innovation Index 2013 [3] of the UN World Intellectual Property Organisation, Kazakhstan has been ranked 84th and was in group of the countries with lagging innovative development. The low level of the knowledge-based industries development in our country linked with the weakness of technological transfer and lack of efficiency functioning of special economic zones and technoparks. In addition, it remains a weak private sector participation in innovation.

Taking into account aforementioned factors, the President of the Republic of Kazakhstan, who in accordance with Paragraph 1 of Article 40 of the Constitution is "the head of state, its highest official determining the main directions of the domestic and foreign policy of the state..." [4] has adopted a number of urgent decisions, aimed at creating global competitiveness of the country.

#### **Intellectual property rights in Kazakhstan: national strategy of development**

The protection of intellectual property has been carried out consistently in Kazakhstan. According to the results of sociological survey of the Kazakhstan Institute for Strategic Studies under the President of the Republic of Kazakhstan, the majority of respondents - 82, 8% have approved the government support to strengthen of the intellectual property protection [5].

Thus, the Kazakhstan consistently coordinating the policy on improving business climate, competitiveness, human rights protection and other aspects of the domestic and foreign policy.

It is important to note, that every step towards the development of country is well-known to all citizens and world community, as set out in Annual Addresses of the President of the Republic Kazakhstan to the citizens. These Addresses are the documents, defining the main directions of the domestic and foreign policy of the country and the particular tasks for the specified period.

After reaching the top 50, the next plan for Kazakhstan is joining the top 30 developed countries of the world [6].

As it indicated in the Program document "Kazakhstan's way – 2050: common aim, common interests, common future", joining the Kazakhstan the top 30 developed countries of the world will be held in two stages.

If on the first stage until 2030, it necessary to make "modernization breakthrough" with creating a

strong manufacturing industry, then in the next decades is required to ensure sustainable development of the country on the principles of knowledge-based economy.

The creation of new industries, such as the mobile and multimedia, nano - technology and aerospace, robotics, genetic engineering, the search and discovery of future energy will be the outcome.

As it planned by governing authority of the Republic of Kazakhstan, the transition to production of high value products will be carried out in traditional industries. This is the aim of the State program of accelerated industrial-innovative development of the Republic of Kazakhstan for 2010-2014 [7].

This Program is a logical continuation of the policy to diversify the economy and promote sustainable and balanced economic growth through diversification and increasing its competitiveness.

Until 2015 the implementation of major investment projects in traditional export sectors of the economy, with multiplication of new business opportunities for small and medium-sized businesses through targeted development of local content and subsequent redistribution processing are the main priority of accelerated industrialization policy.

The revitalization of the technology parks, the creation of intellectual and innovative clusters and persevering activity on protection intellectual property will contribute to Kazakhstan's transition to innovative development.

#### **The legislation of the Republic of Kazakhstan in the sphere of intellectual property rights**

Currently the legislation of Kazakhstan in the sphere of intellectual property generally has formed. There are about 20 legal acts relating to intellectual property issues: the Constitution of the Republic of Kazakhstan, the Civil Code of the Republic of Kazakhstan (special part) [8], the Law on Copyright and Neighboring Rights [9], the Law on Patents of the Republic of Kazakhstan [10], the Law of the Republic of Kazakhstan on Trademarks, Service Marks and Appellations of Origin [11], the Law of the Republic of Kazakhstan on Legal Protection of Topologies of Integrated Microcircuits [12] and etc.

From the earliest years of obtaining independence the obligations stipulated in the famous international legal instruments in the field of intellectual property are fulfilling by the Republic of Kazakhstan.

The Kazakhstan has become the member of a number international organisations, including the World Intellectual Property Organisation (hereinafter - WIPO), Eurasian Patent Office and CIS Interstate Council on the legal protection of intellectual property.

In accordance with the special declaration of the Prime-minister of the Republic of Kazakhstan of February 16, 1993 [13], directed to WIPO, the Kazakhstan recognized the following documents as a mandatory:

Convention Establishing the World Intellectual Property Organization, adopted on July 14, 1967 at Stockholm [14]; Paris Convention for the Protection of Industrial Property, adopted on March 20, 1883 at Paris and revised on July 14, 1967 at Stockholm [15]; Madrid Agreement Concerning the International Registration of Marks, Adopted on April 14, 1891 at Madrid and revised on July 14, 1967 at Stockholm [16]; Patent Cooperation Treaty (PCT), adopted on June 19, 1970 at Washington D.C., amended on September 28, 1979 and modified on February 3, 1984 [17].

Kazakhstan has already made great strides toward establishing an intellectual property rights regime that meets international standards. In anticipation of the 1992 U.S. – Kazakhstan Bilateral Trade Agreement [18], Kazakhstan joined a number of international treaties and conventions: the Berne Convention for the Protection of Literary and Artistic Works [19], Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks [20], Patent Law Treaty [21], WIPO Copyright Treaty, WIPO Performances and Phonograms Treaty [22], Singapore Treaty on the Law of Trademarks [23], Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations [24], Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure [25], Trademark Law Treaty [26], Locarno Agreement Establishing an International Classification for Industrial Designs [27], Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks [28], Strasbourg Agreement Concerning the International Patent Classification [29], the total - 30 international acts.

The majority of these documents have passed through the ratification procedure, which is significant for the country, indicated in the Constitution of the Republic of Kazakhstan. Paragraph 3 of Article 4 of the Constitution of the Republic of Kazakhstan states, that “International treaties ratified by the Republic shall have priority over its laws and be directly implemented...”

The adoption of urgent international obligations dictates the necessity of the modification of national legislation.

During the last years, a number of modifications and amendments, concerning the regulation of intellectual property sphere have been

implemented. As a result, the Law of the Republic of Kazakhstan “On Amendments and Supplements to Certain Legislative Acts relating to Intellectual Property” was adopted in 2012 [30].

The Kazakhstan is a pioneer amongst the former Soviet Union's countries, which has the provisions about the liability for the violation of the copyright and neighboring rights on the Internet were implemented.

The positive result of all modifications in the legislation concerning intellectual property relatively has been reached for the short-term period. According to the Global Index of Competiveness, published in 2013, Kazakhstan on «the protection of intellectual property rights» indicator ranked 73rd, which is higher for 19 items than previous period.

### **Intellectual property in outer space activity of the Republic of Kazakhstan**

Issue of international legal regulation of intellectual property has recently become relevant for international cooperation in the field of outer space activities. In particular, the Republic of Kazakhstan has concluded a number of international treaties and agreements on a bilateral level in the use and exploration of outer space for peaceful purposes. Within these documents are available by separate rules (articles), governing order of the distribution of the results of joint activities (intellectual property).

For instance, the Agreement between the Government of the Republic of Kazakhstan and the Government of the People's Republic of China on cooperation in the exploration and use of outer space for peaceful purposes contains an article 8. In accordance with this article, “the results of joint activities in the framework of the agreement are the intellectual property of the parties.” [31].

At the same time, intellectual property created or acquired during the work under the agreement solely by one party or its executive body, or its partner organizations, belongs to this party or its executive body, or its partner organizations.

In the case of the development or acquisition of intellectual property as a result of work performed jointly, it is possible to conclude a separate document, which determines the order of registration of joint rights to such intellectual property, as well as issues related to its use and protection in accordance with the laws of the States Parties and the international treaties to which are Republic of Kazakhstan and China.

Norms of agreements prohibit its members to sell, license, rent, transfer, disclose, copy, reproduce, display or otherwise distribute to third parties the results of joint activities of the parties without the prior written consent of the other party.

Article 8 of the Agreement between the National Space Agency of the Republic of Kazakhstan and the German Aerospace Centre on Cooperation in the Exploration and Use of Outer Space for Peaceful Purposes is devoted to the intellectual property issues [32]. The Parties and their Cooperating Organizations retain their right of ownership to intellectual property. In a case when all intellectual property developed or acquired solely by a Party, it shall belong to such Party. In the event that intellectual property is developed or acquired jointly by the parties, there should be concluded a separate agreement on determining procedural formalities for joint rights.

In accordance with provisions of the Agreement between the Republic of Kazakhstan and the Government of the State of Israel state-parties shall provide the legislative and regulatory framework for the adequate and effective protection and enforcement of intellectual property rights [33]. It should be based on national laws, regulations and international obligations of the state-parties. Intellectual property as a result of joint activity pursuant to called agreement will be allocated in accordance with terms to be determined in separate agreements.

The agreement between the National Space Agency of the Republic of Kazakhstan and the Emirates Institution for Advanced Science and Technology of the United Arab Emirates on cooperation in the field of exploration and use of outer space for peaceful purposes contains similar provisions as agreements of Kazakhstan with China and Israel [34]. Intellectual property issues are provided by the agreement (intellectual property created or acquired solely by one Party and jointly as well).

Compared to other international treaties essentially stands the Agreement between the Government of the Republic of Kazakhstan and the Government of the French Republic on cooperation in the exploration and use of outer space for peaceful purposes. This agreement regulates in detail the issues of intellectual property and confidential information in an appropriate separate Appendix to the agreement.

In particular, the appendix is determined that the concept of "intellectual property" has the same meaning as in Article 2 of the Convention establishing the World Intellectual Property Organization, done at Stockholm on July 14, 1967 [35]. The Parties shall ensure the protection of intellectual property created or provided under the agreement, in accordance with the laws and other normative legal acts of each state and international treaties. An important aspect is the legal regulation

of the distribution of intellectual property rights. This allocation is based on the financial, scientific and technical contribution of each party in the following areas (each area is regulated by the Appendix to agreement in detail):

- publishing - copyright;
- research activities - intellectual property rights;
- exchange of researchers;
- software.

Nowadays, there is no separate convention in the field of legal regulation of intellectual property directly in carrying out space activities. However, these issues are reflected in the bilateral agreements. On the example of the Republic of Kazakhstan were considered and analyzed some agreements, in particular with Germany, France, Israel, UAE, China. The analysis has showed that the main range of cooperation in this area - the distribution of intellectual property rights as exclusive participation of one state, and as a result of joint activities among its members. In regard to national legislation of the Republic of Kazakhstan, protection of intellectual property derived from the development of space techniques and technologies is provided by the special law of the Republic of Kazakhstan "On space activities" [36], as well as civil legislation.

### Conclusion/Findings

The process of improving national legislation is carried out on permanent basis. The basis of implementing such modifications and amendments is the practice of its application and reassessment of the value of intellectual property objects as a profitable investment by society.

Currently the development of the National Strategy of Intellectual Property issue is actively discussing. According to viewpoints of experts, the adoption of such document will encourage for effective development of economy.

The main task of the National Strategy of Intellectual Property is to ensure the secure protection of the rights on intellectual activity results, to improve legal conditions for creating the fair competition system, to promote industrial-innovative development and to harmonise of the legislation in the sphere of intellectual property within Customs Union and the Common Economic Zone.

The issues of the intellectual property protection are taking on attentions in conditions of the Common Economic Zone (the Russian Federation, the Republic of Belarus, and the Republic of Kazakhstan). Therefore the provision of adequate protection of intellectual property rights in each of the Common Economic Zone countries affect to the economic

development of nations as a whole. One of the key documents is the Agreement on Unified Principles of Regulation in the Spheres of Intellectual Property Rights Protection [37].

The measures directed to combat trafficking in counterfeit goods in the common customs territory of the Customs Union, as well as common measures to combat infringement of intellectual property on the Internet are provided by the Agreement.

The joint efforts of all interested government agencies of the countries forming the Common Economic Zone, as well as the active position of the authors, the owners and other rights holders will be able to contribute to the sustainable economic development of the states, the welfare of the population.

Nowadays, the results of intellectual creative activity are the inherent part of national infrastructure and valuable source, determining the economic prosperity level of the country.

The Kazakhstan is making clear and logical steps, ensuring that creative activity results and effective system of legal protection will play a key role in laying the foundations for reorienting the economy from raw materials to high-tech areas.

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