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Actual problems of social and humanitarian sciences
Актуальные проблемы социальных и гуманитарных наук

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2024

SCIENCEPROBLEMS.UZ

ИЖТИМОЙ-ГУМАНИТАР ФАНЛАРНИНГ ДОЛЗАРБ МУАММОЛАРИ

№ 7 (4) - 2024

**АКТУАЛЬНЫЕ ПРОБЛЕМЫ СОЦИАЛЬНО-
ГУМАНИТАРНЫХ НАУК**

ACTUAL PROBLEMS OF HUMANITIES AND SOCIAL SCIENCES

ТОШКЕНТ-2024

БОШ МУҲАРРИР:

Исанова Феруза Тулқиновна

ТАҲРИР ҲАЙЪАТИ:

07.00.00-ТАРИХ ФАНЛАРИ:

Юлдашев Анвар Эргашевич – тарих фанлари доктори, сиёсий фанлар номзоди, профессор, Ўзбекистон Республикаси Президенти ҳузуридаги Давлат бошқаруви академияси;

Мавланов Укташ Махмасабирович – тарих фанлари доктори, профессор, Ўзбекистон Республикаси Президенти ҳузуридаги Давлат бошқаруви академияси;

Хазраткулов Аброр – тарих фанлари доктори, доцент, Ўзбекистон давлат жаҳон тиллари университети.

Турсунов Равшан Нормуратович – тарих фанлари доктори, Ўзбекистон Миллӣ Университети;

Холикулов Ахмаджон Боймаҳамматовиҷ – тарих фанлари доктори, Ўзбекистон Миллӣ Университети;

Габриэльян Софья Ивановна – тарих фанлари доктори, доцент, Ўзбекистон Миллӣ Университети.

Сайдов Сарвар Атабулло ўғли – катта илмий ҳодим, Имом Термизий халқаро илмий-тадқиқот маркази, илмий тадқиқотлар бўлими.

08.00.00-ИҚТИСОДИЁТ ФАНЛАРИ:

Карлибаева Раја Хожабаевна – иқтисодиёт фанлари доктори, профессор, Тошкент давлат иқтисодиёт университети;

Насирходжаева Дилафруз Сабитхановна – иқтисодиёт фанлари доктори, профессор, Тошкент давлат иқтисодиёт университети;

Остонокулов Азамат Абдукаримович – иқтисодиёт фанлари доктори, профессор, Тошкент молия институти;

Арабов Нурали Уралович – иқтисодиёт фанлари доктори, профессор, Самарқанд давлат университети;

Худойқулов Садирдин Каримович – иқтисодиёт фанлари доктори, доцент, Тошкент давлат иқтисодиёт университети;

Азизов Шерзод Ўқтамович – иқтисодиёт фанлари доктори, доцент, Ўзбекистон Республикаси Божхона институти;

Хожаев Азизхон Саидалоҳоновиҷ – иқтисодиёт фанлари доктори, доцент, Фарғона политехника институти

Холов Актам Ҳатамович – иқтисодиёт фанлари бўйича фалсафа доктори (PhD), доцент, Ўзбекистон Республикаси Президенти ҳузуридаги Давлат бошқаруви академияси;

Шадиева Дилдора Ҳамидовна – иқтисодиёт фанлари бўйича фалсафа доктори (PhD), доцент в.б, Тошкент молия институти;

Шакаров Кулмат Аширович – иқтисодиёт фанлари номзоди, доцент, Тошкент ахборот технологиялари университети

09.00.00-ФАЛСАФА ФАНЛАРИ:

Ҳакимов Назар Ҳакимович – фалсафа фанлари доктори, профессор, Тошкент давлат иқтисодиёт университети;

Яхшиликов Жўрабой – фалсафа фанлари доктори, профессор, Самарқанд давлат университети;

Ғайбуллаев Отабек Мухаммадиевич – фалсафа фанлари доктори, профессор, Самарқанд давлат чет тиллар институти;

Сайдова Камола Усканбаевна – фалсафа фанлари доктори, "Tashkent International University of Education" халқаро университети;

Хошимхонов Мўмин – фалсафа фанлари доктори, доцент, Жиззах педагогика институти;

Ўроқова Ойсулув Жамолиддиновна – фалсафа фанлари доктори, доцент, Андижон давлат тибиёт институти, Ижтимоий-гуманитар фанлар кафедраси мудири;

Носирходжаева Гулнора Абдукаҳаровна – фалсафа фанлари номзоди, доцент, Тошкент давлат юридик университети;

Турдиев Бехруз Собирович – фалсафа фанлари бўйича фалсафа доктори (PhD), доцент, Бухоро давлат университети.

10.00.00-ФИЛОЛОГИЯ ФАНЛАРИ:

Ахмедов Ойбек Сапорбаевич – филология фанлари доктори, профессор, Ўзбекистон давлат жаҳон тиллари университети;

Кўчимов Шухрат Норқизилович – филология фанлари доктори, доцент, Тошкент давлат юридик университети;

Ҳасанов Шавкат Аҳадович – филология фанлари доктори, профессор, Самарқанд давлат университети;

Бахронова Дилрабо Келдиёрова – филология фанлари доктори, профессор, Ўзбекистон давлат жаҳон тиллари университети;

Мирсанов Ғайбулло Қулмурадович – филология фанлари доктори, профессор, Самарқанд давлат чет тиллар институти;

Салахутдинова Мушарраф Исамутдиновна – филология фанлари номзоди, доцент, Самарқанд давлат университети;

Кучкаров Рахман Урманович – филология фанлари номзоди, доцент в/б, Тошкент давлат юридик университети;

Юнусов Мансур Абдуллаевич – филология фанлари номзоди, Ўзбекистон Республикаси Президенти хузуридаги Давлат бошқаруви академияси;

Саидов Улугбек Арипович – филология фанлари номзоди, доцент, Ўзбекистон Республикаси Президенти хузуридаги Давлат бошқаруви академияси.

12.00.00-ЮРИДИК ФАНЛАР:

Ахмедшаева Мавлюда Ахатовна – юридик фанлар доктори, профессор, Тошкент давлат юридик университети;

Мухитдинова Фирюза Абдурашидовна – юридик фанлар доктори, профессор, Тошкент давлат юридик университети;

Эсанова Замира Нормуротовна – юридик фанлар доктори, профессор, Ўзбекистон Республикасида хизмат кўрсатган юрист, Тошкент давлат юридик университети;

Ҳамроқулов Баҳодир Мамашарифович – юридик фанлар доктори, профессор в.б., Жаҳон иқтисодиёти ва дипломатия университети;

Зулфиқоров Шерзод Хуррамович – юридик фанлар доктори, профессор, Ўзбекистон Республикаси Жамоат хавфсизлиги университети;

Хайитов Хушвақт Сапарбаевич – юридик фанлар доктори, профессор, Ўзбекистон Республикаси Президенти хузуридаги Давлат бошқаруви академияси;

Асадов Шавкат Файбуллаевич – юридик фанлар доктори, доцент, Ўзбекистон Республикаси Президенти хузуридаги Давлат бошқаруви академияси;

Утемуратов Махмут Ажимуратович – юридик фанлар номзоди, профессор, Тошкент давлат юридик университети;

Сайдуллаев Шахзод Алиханович – юридик фанлар номзоди, профессор, Тошкент давлат юридик университети;

Ҳакимов Комил Бахтиярович – юридик фанлар доктори, доцент, Тошкент давлат юридик университети;

Юсупов Сардорбек Баходирович – юридик фанлар доктори, доцент, Тошкент давлат юридик университети;

Амирор Зафар Актамович – юридик фанлар бўйича фалсафа доктори (PhD), Ўзбекистон Республикаси Судъялар олий кенгаши хузуридаги Судъялар олий мактаби;

Жўраев Шерзод Юлдашевич – юридик фанлар номзоди, доцент, Тошкент давлат юридик университети;

Бабаджанов Атабек Давронбекович – юридик фанлар номзоди, доцент, Тошкент давлат юридик университети;

Раҳматов Элёр Жумабоевич - юридик фанлар номзоди, Тошкент давлат юридик университети;

13.00.00-ПЕДАГОГИКА ФАНЛАРИ:

Хашимова Дильдархон Уринбоевна – педагогика фанлари доктори, профессор, Тошкент давлат юридик университети;

Ибрагимова Гулнора Хавазматовна – педагогика фанлари доктори, профессор, Тошкент давлат иқтисодиёт университети;

Закирова Феруза Махмудовна – педагогика фанлари доктори, Тошкент ахборот технологиялари университети хузуридаги педагогик кадрларни қайта тайёрлаш ва уларнинг малакасини ошириш тармоқ маркази;

Каюмова Насиба Ашуревна – педагогика фанлари доктори, профессор, Қарши давлат университети;

Тайланова Шоҳида Зайневна - педагогика фанлари доктори, доцент;

Жуманиёзова Мұхәйё Тожиевна – педагогика фанлари доктори, доцент, Ўзбекистон давлат жаҳон тиллари университети;

Ибрахимов Санжар Урунбаевич – педагогика фанлари доктори, Иқтисодиёт ва педагогика университети;

Жавлиева Шахноза Баходировна – педагогика фанлари бўйича фалсафа доктори (PhD), Самарқанд давлат университети;

Бобомуротова Латофат Элмуродовна - педагогика фанлари бўйича фалсафа доктори (PhD), Самарқанд давлат университети.

19.00.00-ПСИХОЛОГИЯ ФАНЛАРИ:

Каримова Васила Маманосировна – психология фанлари доктори, профессор, Низомий номидаги Тошкент давлат педагогика университети;

Хайитов Ойбек Эшбоевич – Жисмоний тарбия ва спорт бўйича мутахассисларни қайта тайёрлаш ва малакасини ошириш институти, психология фанлари доктори, профессор

Умарова Навбаҳор Шокировна – психология фанлари доктори, доцент, Низомий номидаги Тошкент давлат педагогика университети, Амалий психологияси кафедраси мудири;

Атабаева Наргис Батировна – психология фанлари доктори, доцент, Низомий номидаги Тошкент давлат педагогика университети;

Шамшетова Анжим Карамаддиновна – психология фанлари доктори, доцент,

Ўзбекистон давлат жаҳон тиллари университети;
Қодиров Обид Сафарович – психология фанлари доктори (PhD), Самарканд вилоят ИИБ Тиббиёт бўлими психологик хизмат бошлиғи.

22.00.00-СОЦИОЛОГИЯ ФАНЛАРИ:

Латипова Нодира Мухтаржановна – социология фанлари доктори, профессор, Ўзбекистон миллий университети кафедра мудири;
Сеитов Азамат Пўлатович – социология фанлари доктори, профессор, Ўзбекистон миллий университети;

Содиқова Шоҳида Мархабоевна – социология фанлари доктори, профессор, Ўзбекистон халқаро ислом академияси.

23.00.00-СИЁСИЙ ФАНЛАР

Назаров Насриддин Атакулович –сиёсий фанлар доктори, фалсафа фанлари доктори, профессор, Тошкент архитектура қурилиш институти;
Бўтаев Усмонжон Хайруллаевич –сиёсий фанлар доктори, доцент, Ўзбекистон миллий университети кафедра мудири.

ОАК Рўйхати

Мазкур журнал Вазирлар Маҳкамаси ҳузуридаги Олий аттестация комиссияси Раёсатининг 2022 йил 30 ноябрдаги 327/5-сон қарори билан тарих, иқтисодиёт, фалсафа, филология, юридик ва педагогика фанлари бўйича илмий даражалар бўйича диссертациялар асосий натижаларини чоп этиш тавсия этилган илмий нашрлар рўйхатига киритилган.

Ижтимоий-гуманитар фанларнинг долзарб муаммолари” электрон журнали 2020 йил 6 август куни 1368-сонли гувоҳнома билан давлат рўйхатига олинган.

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Таҳририят манзили:

100070. Тошкент шаҳри, Яккасарой тумани, Кичик Бешёғоч кўчаси, 70/10-уй. Электрон манзил:
scienceproblems.uz@gmail.com

Боғланиш учун телефонлар:
(99) 602-09-84 (telegram).

07.00.00 – TARIX FANLARI

Abduxamidov Islombok

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PROTECTION OF COMMERCIALY CONFIDENTIAL INFORMATION: PROSPECTS FOR IMPROVING LEGISLATION IN THE FIELD OF INTELLECTUAL PROPERTY LAW

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Abstract. In this article is given a complex analyses of essence and legal nature of information as the object of legal relations in the system of objects of intellectual property and also elaborated decisions to improve acting legislation regulating present sphere.

Key words: intellectual property, information, confidential information, legal regime, types of information, methods of protection of information, modern criteria.

TIJORAT MAXFIY MA'LUMOTLARINI HIMOYA QILISH: INTELLEKTUAL MULK HUQUQI SOHASIDAGI QONUNCHILIKNI TAKOMILLASHTIRISH ISTIQBOLLARI

Raimova Nargiza Doroyevna

Jahon iqtisodiyoti va diplomatiya universiteti, «Fuqarolik huquqi va xalqaro xususiy huquq fanlari» kafedrasi professori yuridik fanlar doktori

Annotatsiya. Maqolada intellektual mulk obyektlari tizimida huquqiy tartibga solish obyekti sifatida axborotning mohiyati va huquqiy tabiatini har tomonlama tahlil qilingan, shuningdek ushbu sohani tartibga soluvchi amaldagi qonunchilikni takomillashtirish bo'yicha takliflar berilgan.

Kalit so'zlar: intellektual mulk, axborot, maxfiy ma'lumotlar, huquqiy rejim, axborot turlari, axborotni himoya qilish usullari, zamonaviy me'zonlar.

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For a very long time, due to the dominance of the administrative-command economy and in the period of state monopoly in the economy, the institution of confidential information was absent and the protection of information constituting commercial or banking secrets was carried out through such types of confidential information as official and state secrets.

It is no secret that in a market economy entrepreneurial activity is inextricably linked to the acquisition and use of various types of information. At that, in modern conditions information is a special kind of commodity, which has a certain value. In this regard, one cannot but agree with the opinion of the President of the Republic of Uzbekistan Mirziyoyev Sh.M., who states that: «Improvement of the system of ensuring information security and

information protection, timely and adequate counteraction to threats in the information sphere are priority directions in the field of ensuring security» [3]. For our domestic entrepreneurs, often the most valuable information is that which they use to achieve the goals of their enterprise and the disclosure of which may deprive them of the opportunity to realize these goals, that is, creates threats to the security of entrepreneurial activity. Of course, not all information can pose various threats if disclosed, but there are some types of information, in particular commercial and banking secrets, that need to be protected [16; 21–26-p.].

And in the conditions of fierce competition it is very important to preserve the information that contains trade secrets of any enterprise. After all, as noted in the encyclopedic dictionary of Brockhaus and Efron, «personal and property security is the most important guarantee of human development».

As rightly notes K.S.Kushiyev, «the institute of trade secrets is one of the important components of the system of ensuring the stability of the market, limitation of monopolism in production and economic relations and through these factors to a certain extent influences the block of social relations in general. Without detailed development of the legal institute of trade secrets it is practically impossible to progressive development of healthy market relations, as well as full provision of the rights of authors of discoveries and inventions» [11; 116–119-p.].

Today many businesses owe their success to the skillful preservation of their confidential information.

In addition, trade or banking secrets are intended to protect commercial success, priority position in a market economy and, as a consequence, protection of financial resources invested in relevant developments and research.

Objects referred to commercially confidential information may be the subject of various agreements: founding, investment, on the transfer of scientific and technical products, on the provision of compensated services, sale and purchase, etc.

The study of the issues of formation and development of the legal institute of trade secrets, determination of its place and role in the formation of mechanisms of information support for the activities of commercial organizations and the legal provision of their information security is currently an independent theoretical task, the establishment and fundamental importance of which involves attracting the attention of civil science [14; 19–20-p.].

Thus, when studying the nature of commercial or banking secrets, first of all, in our opinion, it is necessary to understand what is their place among the objects of civil rights, in particular, in the system of intellectual property objects, because, as rightly noted by Gafurov A., «in modern conditions, intellectual property right becomes one of the important factors determining the position of the country in the world. At the same time, solving the problems of intellectual property protection is an extremely difficult task. This is due to the insufficient development of legal norms, differences in the approaches of individual countries and groups of countries, and the lack of cross-border enforcement structures» [4; 18-p.].

Before answering the question whether trade secrets or bank secrets can be considered as intellectual property, it is necessary to understand what the concept of «intellectual property» is.

The term «intellectual property» can be found for the first time in the French legislation of the XVIII century. Its justification is contained within the framework of the doctrine of natural

law presented by French philosophers-enlighteners: Voltaire, Diderot, Rousseau and others. According to their views, «the right of the creator of a creative result, be it a literary work or an invention, is his inherent, natural right, arises from the very nature of creative activity and exists independently of the recognition of this right by public authority» [18; 626-p.].

Since its inception, this concept has given birth to two major legal theories that assess the nature of rights to creative works in different ways. The first theory is called *proprietary* (from the english word proprietary – property). The essence of this theory is to equate the rights to the results of creative activity with the right to property. Although this theory has been heavily criticized since its inception, it still exists today. For example, in the United States, many judges treat trade secrets as common property and apply laws on ownership, definition and theft of private property and intellectual property.

The theory opposing proprietary theory is the increasingly recognized theory of *exclusive rights*. In accordance with the main provisions of this theory, the rights of authors, inventors, patentees, etc., should be recognized as rights of a special kind, which are outside the classical division of civil rights into proprietary, obligatory and personal rights [6; 266-p.].

Under intellectual property, according to the current civil legislation, in particular, Article 1031 of the Civil Code of the Republic of Uzbekistan, is recognized the exclusive right of a citizen or a legal entity to the results of intellectual activity and equivalent means of individualization of a legal entity, individualization of products, works or services. Accordingly, despite the fact that our legislation uses the concept of «intellectual property», in fact it is understood as a set of personal and property rights to the results of intellectual property, and these rights are «closely interrelated and intertwined, forming an inseparable unity».

The concept of the «result of intellectual activity» is detailed in the legislative acts of the Republic of Uzbekistan, dedicated to the regulation of relations related to specific objects of intellectual property. Thus, for example, in accordance with the Law of the Republic of Uzbekistan «On Copyright and Related Rights», the object of copyright is works of science, literature and art that are the result of creative activity [1].

Meanwhile, the Civil Code of the Republic of Uzbekistan in Article 1031 defines the object of intellectual property as «*the result of intellectual activity*» and not as «*the result of creative activity*» [2]. The concept of intellectual activity is broader than the concept of creative activity and may well include non-creative objects.

Further, the literature indicates that the object of intellectual property in all cases refers to an intangible good that is merely embodied in certain tangible objects that are its material carriers [18; 620-p.].

Thus, the object of intellectual property is a certain intangible good created as a result of human intellectual activity. It can also be information. As already noted, information itself is intangible and is only embodied on material carriers.

Also quite fair is the point of view of V.A.Kopylov, who believes that «information is created practically in the process of any intellectual (mental) activity of a person» [10; 49-p.].

Accordingly, commercial or banking secrets as types of information may well be considered intellectual property objects.

The question, however, is whether they actually are?

In foreign literature, for example, the question of attributing trade or banking secrets to intellectual property objects is solved in different ways. Thus, the American author Richard Stim writes: «Trade secrets are an important type of intellectual property rights» [20; 236-p.].

In Germany, on the contrary, such information is not referred to the objects of exclusive rights. Thus, according to G.Stumpf, «know-how is not a form of industrial property protection, as it does not have the characteristics of an exclusive right» [23; 33-p.].

Another scholar of German intellectual property law also notes: «There is neither an absolute nor an exclusive right to know-how for intangible results of intellectual activity» [8; 15–16-p.].

The approach of Russian scholars is very interesting on this issue, as they are divided into two diametrically opposed camps. The supporters of the first approach include information constituting commercial or banking secrets in the composition of intellectual property, while the supporters of the second approach believe that information constituting commercial or banking secrets is an independent object of modern civil law.

The attribution of trade secrets to intellectual property is due to the fact that historically the birth of the institution of trade secrets took place within the framework of such an object of civil rights as intellectual property, and its legal regulation was built on a model as close as possible to the already known one [7; 99–113-p.].

Proponents of the first approach, in particular, A.P.Sergeyev, V.A.Dozorsev, believe that the information constituting a trade secret should be considered an object of intellectual property, as it has all its properties and is a type of intellectual property. For example, A.P.Sergeyev notes that «trade secret is an institution of intellectual property, it has all the properties of an object of intellectual property» [18; 620-p.]. A.A.Fatyanyov adheres to a similar point of view [21; 284-p.].

V.A.Dozorsev points out that «for isolated information, which is understood as special information that has commercial value and is not publicly available, it is necessary to fix an absolute right. Since the information is intangible knowledge, they are assigned the rights attributed to the number of exclusive rights. However, these are not traditional exclusive rights, but rather peculiar» [7; 99–113-p.].

V.Smirnov argues that «trade secret is not an independent object of civil rights, it can be attributed to the result of intellectual activity. He confirms the similarity of these concepts, comparing the following features: both these objects are intangible, they arise as a result of intellectual activity, although the creative level of these objects may not be comparable, the criteria of negotiability and protectability are applicable to these objects» [19; 34–37-p.].

E.V.Shishmareva adheres to a broad approach to the understanding of intellectual activity, that is, when intellectual property law regulates a wide range of property (exclusive) and related personal non-property relations arising from the results of intellectual activity and equivalent means of individualization of a legal entity, individualization of products, works and services. In this regard, it is pointed out that a trade secret is recognized as a result of intellectual activity [22; 340-p.].

Severin R.V. believes that «trade secret, which combines the secret of production (know-how) and commercial information, refers to «non-traditional» objects of intellectual property. In support of this conclusion, he points out that trade secrets are the result of intellectual activity, which is a sign of intellectual property» [17; 29-p.].

In contrast to the above authors, the proponent of the opposite approach, in particular, the Russian legal scholar O.A.Gorodov, believes that «the legal regime of secret information is fundamentally different from the legal regime established in respect of protected results of intellectual activity».

In his view, this distinction is manifested in the following:

1. In the opposite orientation of the interests of the owner of confidential information and the interests of the owner of information representing the result of intellectual activity, since the persons of the first category are interested in taking measures to prevent the dissemination of relevant information, and the second, on the contrary, are interested in the dissemination of the intellectual product.

2. In different legal mechanisms of protection of the rights and interests of the owner of the result of intellectual activity and the owner of trade secrets. The owner of information constituting a trade secret restricts its dissemination by technical and other means. Here there is a variant of the mechanism of information protection alternative to the exclusive right – de facto monopoly.

3. Deliberately concealed information cannot be included in the framework of exclusive rights, because the factor of their unknown nature does not allow to establish the very content of information as an object of protection. In this case, it is impossible, as it happens with respect to the results of intellectual activity, to determine the actions that the owner of information can perform and authorize to perform [5; 82-p.].

Kolomiyets A.V. also believes that «trade secret is an independent object of civil rights and does not refer to a type of intellectual activity» [9; 62-p.].

Belarusian scientist Losev S.S., in turn, also points out that «undisclosed information (in particular, trade secrets) does not refer to the objects of intellectual property». The opinion on attributing trade secrets to the objects of exclusive right, according to Losev S.S., is contradictory, «since the monopoly granted to the owner of the exclusive right presupposes to determine the positive component of the right to information, and this is impossible to do» [12; 62-p.].

As far as the Republic of Uzbekistan is concerned, our national legislation and scientific literature currently reflect the approach that commercial or banking secrecy relates to intellectual property, since civil legislation defines information constituting commercial or banking secrecy as a form of protection of undisclosed information, which, in turn, is an object of intellectual property rights. This follows from the provisions of Chapter 64 of the Civil Code of the Republic of Uzbekistan «Protection of undisclosed information from illegal use» [2].

A similar approach is also reflected in the works of our scientists. For example, Okyulov O. [13; 170-p.], Rustambekov I., Nuridullayev A. [15; 4-p.] also believe that trade secrets, including know-how, are included in the system of intellectual property objects.

Based on the above, we have come to the conclusion that commercial or banking secrecy has a dual nature. On the one hand, in our opinion, as well as intellectual property objects, the information constituting commercial or banking secrets arises as a result of intellectual activity. But, on the other hand, we believe that today there are certain differences between trade or banking secrets and intellectual property objects, which lie in the mechanism and purposes of their protection. Intellectual property objects are open to third parties and are often valuable precisely because of their wide dissemination (e.g. copyright, patent right, trademark, service

mark, etc.), while information constituting a commercial or banking secret is valuable to its owner only when it is unknown to third parties and, accordingly, is concealed from them.

In addition, information constituting a trade or banking secret is always presented in an intangible form, which is not the case with intellectual property objects (for example, an invention is expressed in tangible form).

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Nº 7 (4) – 2024

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