Exploitation of Plant Varieties

- Observance of Rights [1]
  The owner of a plant patent shall be offered a range of efficient and effective means to ensure observance of its rights and the persons violating these rights shall be sanctioned. At the same time, a patent application, within the period between its publication and the grant of the patent, gives the applicant, on a provisional basis, the same rights as those conferred by the patent owner, providing that patent protection is obtained.

  Thus, the owner of a plant patent has the following procedures / methods to protect its rights and interests:

  - **civil procedures –** the disputes concerning actions for infringement of a patent application or a patent and the ordering of the said measures shall be resolved by the district court where AGEPI premises are located, namely by the Riscani district court in Chisinau;
  - **administrative procedures -** provide a quick mechanism to penalize the persons involved in the manufacture, reproduction, conditioning for the purpose of propagation , transportation, importation, exportation, offering for sale, sale, other ways for commercial distribution, storage for such purposes of the patented plant material that require, according to the legislation, authorization from the owner, conducted without such authorization;
  - **criminal procedures -** provide the possibility of harsher sanctioning, including the imprisonment of persons involved in the manufacture, reproduction, conditioning for the purpose of propagation , offering for sale, sale, other ways for commercial distribution, importation, exportation or storage for such purposes of the patented plant material that require, according to the legislation, authorization from the owner, conducted without such authorization; and inciting third parties to perform such actions, which caused large-scale damages (over 50 000 lei);
  - **cross-border protection of rights** – is provided by the Customs Service of the Republic of Moldova.

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- Transfer of Rights [1]
  The patent application and the patent may be transferred to one or several successors in title. The patent application and the patent may be the subject to some license contracts. These licenses may be exclusive or non-exclusive.

  A patent may be independently pledged or it may be the subject to a certain real right. Patent pledges shall be registered in the Pledged Movable Assets Registry according to the Law on Pledge. Other real rights to patents shall be entered in the National Register of Patents at the request of a Contracting Party and shall become opposable to third parties as of the date of registration, and data on those rights shall be published in BOPI.

  Also, the courts may grant compulsory non-exclusive licenses for the use of the protected variety to one or several persons having filed an application after the expiration of a period of 3 years from the grant of the patent, subject to the conditions laid down in the Law.

  The assignment, license, pledge and franchising contracts shall be registered with the AGEPI at the request of the Contracting Parties. Registration of a contract may be requested by filing an application, typed or printed on a standard form approved by the AGEPI, except the pledge contract, the registration of which shall be carried out based on a notice specifying the registration of the pledge.

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- Plant Variety Valuation [1]

In a market economy, the valuation is an imminent condition of involving intellectual property in the economic circuit. The opportunity of IP valuation derives from the fact that in recent decades it has turned into a sector of crucial importance to the economic growth and an extremely important segment of the national and world markets.

The need to value intellectual property manifests itself in an impressive variety of purposes for which, typically, its results are used. They arise from the current economic activity for efficient use of intellectual resources and are divided into two categories: *caused by the need for financial reporting and aimed to facilitate integration of intellectual property in the economic circuit*. We will mention the most important objectives of intellectual property valuation:

- IPO marketing through assignment and licensing procedures, and also in the *in corpore* alienation of business;
- IPO integration in the economic circuit within the holder enterprise and the management thereof under conditions and through instruments of market economy;
- determination of efficiency of investment projects in which IPO are embedded;
- IPO inclusion in the registered capital of companies by setting patrimonial quotas equivalent to the value of the objects concerned;
- IPO accounting by integrating their value in the balance sheets of the companies;
- tax rate determination of the income derived from intellectual property as patrimonial elements or as income sources subject to taxation;
- estimation of the amount of damage due to unlawful use of IPO;
- use of intellectual property as collateral for pledging in order to obtain bank loans;
- insurance of intellectual property objects and the patrimony which includes such objects;
- merger, division, separation, liquidation, bankruptcy, reorganization of the enterprises that have IPO portfolios;
- privatization of the enterprises holding patents, trademarks and other IPOs.

Intellectual property valuation operates with several types of value, of which the most commonly used are: the balance sheet value; the initial value; the market value; the investment value; the liquidation value; the insurance value; the tax value; the replacement value; the reproductive value of the object under evaluation; the contract value. The multiplicity of valuation purposes and types of intellectual property objects, largely determines the value diversity. Among the most commonly used are the balance sheet value and the market value.

Intellectual property valuation methods represent an extremely wide variety of specific expressions of calculation methods and techniques applicable to the valuation practice. The most common methods of IP valuation used in the valuation practice and reflected in the literature are:

- *Creation cost method* consists in summing all the historical expenditures on the creation, protection, promotion, implementation, dispute settlement related to the object under valuation for the previous period by updating them to the valuation date. It includes wage costs, depreciation, consumption of raw materials, of prototype construction, of testing, of certification, protection fees, launch fees and advertising fees, general and administrative expenses etc. The method shall be applied in the absence of information on comparative costs and effects of subsequent application of the object.
- *Restoration cost method* involves summing the actual costs necessary for the establishment of a similar asset (a copy) to the assessed one. As a general rule, it is applied in the absence of adequate records of the creation costs.
- *Replacement cost method* considers the creation costs of an asset with a similar or close utility to the asset under valuation. It shall be applied in the acquisition of intangible assets, the price of which must not exceed the value of the analogue object.
- *Sales comparison method* is based on the selection of similar object transactions carried out in transparent conditions, which have the same utility by comparing the

properties thereof with those of the object to be valued. It is very important in this case the choice of truthful comparison parameters and accurate weight of each in the value of objects.
- *Royalty relief method* assumes that the company which buys an asset would be exempt from payment for the licensing of a similar object.
- *Additional profit method* includes the profits generated by the application of the object under valuation.

The preferences in selecting the methods proposed to be applied in the valuation of a concrete intellectual property object differ, depending on the valuation purposes and technological and economic information available concerning the elaboration and exploitation of the object concerned.

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