

Intellectual Property in Critical Conditions

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Abstract: - Many meaningful reasons make intellectual property and its protection be imperative. Among the motivating factors: creativity in the technical and cultural fields influence progress and prosperity of humanity; the legal protection of new creations encourages investment, leading to other innovations; the promotion and protection of intellectual property stimulates economic growth, leading to the creation of new jobs and new branches of activity, improving the quality of life. In the vast majority of the works aimed at intellectual property, with its two components: on the one hand, industrial property and on the other hand, copyright and related rights, intellectual property is designed and treated under normal conditions. This is why we chose to look into a less studied topic, namely intellectual property in critical conditions.

Key-Words: - Intellectual property, courage to take a risk, intellectual property under crisis conditions, ethical code in intellectual property, general critical conditions, specific critical conditions.

1 Introduction

Intellectual property is a form of legal title allowing its holder to control the use of certain intangibles such as ideas or expression. Common forms of intellectual property include:

- patents protecting the original solutions and ideas;
- copyright that protects the expressive form of an original (literary, artistic or technical) work;
- industrial brands that protect the way of identification of a manufacturer or other reputable sources;
- industrial patterns and designs;
- industrial secrecy.

All these forms are treated in the literature in normal circumstances, under the life experience sign, launching an ongoing challenge to the capacities, beliefs and predetermined patterns of the subjects' intellectual property.

During actions, innovators, inventors and scientists, in confrontation with critical situations, have some formative experience that develops their confidence to evaluate and take risks at the level they are placed and work or. The success following a challenge succeeds in strengthening both the capacity and the confidence in doing one's duties in other similar situations.

The most difficult moments are those of crisis. Therefore, the subjects of intellectual property have

the duty to study these moments in order to learn as much as possible from them. Valuable lessons can be learnt from formative experiences with a substitution role, which can be exploited for the good of intellectual property.

The provision of risk taking may be enhanced by a series of previous experiences. The idea according to which "one should act, otherwise one is dead" must become second nature. Intellectual property risks may be small or big, and the subject is obliged to adapt to each situation. He has the duty to learn to overcome their uncertainties, taking cases under control, and monitoring the emotional response to challenges and risk.

From all the things mentioned above we can draw the conclusion that the issue of intellectual property in critical conditions is very interesting, especially during the current period of evolution of the Romanian economy and in the context of the global economic crisis.

As a result, the *scientific documentary research* aimed to identify the main forms of critical conditions that arise in the design and development of intellectual property. It is about the general and specific critical conditions.

The *conceptual basis* of our paper is represented by the works of foreign authors and the authors mentioned in selective bibliography. We specify that among the specified authors and other bibliographical sources, a distinct place was

reserved to management and psycho-sociology as managerial and psychosocial components both in normal and critical conditions are insufficiently treated in literature. As a result, the issues we refer to in our paper make this a very actual and important topic, being of great complexity and difficulty.

The paper *generalizes the results of a complex research* on the topic of ‘intellectual property in critical condition’.

In the investigation we have given an important place and role to *the analysis of general and specific forms of the critical conditions* present in intellectual property. We insisted on the causative and factorial analysis.

At the same time, we insisted on *the practical value* of our research. We outlined the ways of developing the courage to take risks, of developing the assessment skills of the critical states present in intellectual property; we developed a guide marking sheet and a guide regarding the behaviour of subjects dealing with intellectual property in critical conditions.

In *comparison with similar research*, our investigation is different due to the fact that it focuses on the critical conditions that occur during the design and implementation process of intellectual property.

The contribution of our paper to its area consists in: presentation of general and specific critical characteristics, with an emphasis on the managerial and psychosocial components; study of theoretical and applied bases of the crisis and of their influence on the intellectual property; image, function and role of crisis management on intellectual property.

2 Intellectual property in general critical conditions

2.1 Risk in intellectual property

To overcome risk states in intellectual property means to know. To know means to have knowledge and have knowledge means to learn.

The concept of risk in intellectual property is rarely used in literature, although it is an objective reality of the contemporary world, characterized as a harder and harder struggle for the companies’ development through the appeal to intellectual property. In order to address risks the intellectual property subjects are asked to show a strong entrepreneurship spirit, to make decisions in a short term and based on analysis and counteracting the involved risks, to correlate the anti-risk actions, to

overcome the moments of partners’ distrust and to maintain normal business relations in the company.

Intellectual property creators and beneficiaries should take into consideration that risk occurs continuously and it is amplified in crucial moments. And, they should bear in mind that once the risk mechanisms of analysis opportunities and management and psycho-sociology were designed, the issue of intellectual property has changed through its gradual integration into the global business environment. In parallel, there is the need to develop general concepts related to intellectual property risk and to interrelations between different types of risk.

As regards the Romanian economy, it is currently under the action of three opposing forces [7]. A first trend of stress and risks is the general movement towards globalization, internationalization, openness and the organic need to keep itself as a living entity, maintaining its identity. Among the many theoretical developments involved by the specific situation outlined above, it is necessary for intellectual property scholars and practitioners to address issues in intellectual property risk in terms of strategy, decision and informational system. Innovators, inventors and scientists are forced to connect themselves to the real achievements resulting from the overall size of the business world, the evolution of humanity as a planetary society with its complex train located on the globalised trade, the capital movements and the media.

The second trend generating tensions is the one regarding autonomy – interdependence – economic integration, about which we will keep in mind the following:

- the global economy has witnessed a shift from autonomy to economic independence;
- complex independence “is presented with an economic process” that takes place among a multitude of actors, through a variety of channels and without the existence of structures of authority and hierarchy;
- due to the unprecedented development of the integrating product, there are situations in which the integration policies and the national policies are not compatible, which leads to controversy and tensions, particularly at the level of intellectual property.

And, finally, the third largest tension-generating tendency is found in modernization versus underdevelopment, a process that has many features, such as:

- due to the development of modern political structures and new technologies, a globalization of

the productive, investment and trade processes is achieved;

- at the same time, the process of modernization also generates inequalities in development, in income distribution, leading to underdevelopment between regions, as well as within them;

- inequality contributes to the movement of production from one country to another, accompanied by the unregulation of competition.

Against this national, European and international background, legal framework is a source of risk for the promotion of innovation and finally of intellectual property. The following are some situations that could generate intellectual property risk [3]:

- the terms “contract of employment that provides an inventive mission” and “invention resulting from a research contract” are not sufficiently explicit, especially in terms of the results of the inventive activity;

- the issues related to intellectual creation of researchers in the field of basic research and the issue of creation in the case of the applied research researchers are not sufficiently addressed;

- the transition to the new knowledge management company is not properly prepared. Thus, the employees are not certain that they are employed for ever. At the same time, the employees are not persuaded to work together, in teams. And, also, no conditions to facilitate the researchers’ fully aware participation to the creative activity are not created;

- the issue of material compensation from the company that called a secrecy an invention is not dealt with. Talking about secret issues with implications of national security, the risk is quite high;

- foreign certification of investment and innovation requires the inventor to make the first deposit in the country, which is likely to restrict ownership of the invention and to generate risk status;

- how the Romanian state gives material support to non-governmental organizations working in the field of industrial property is not determined.

2.2 Intellectual property in situations of crisis

The essential correlation between the fundamental areas of crises and their features is that between resources and need. The essential character of this correlation is maintained in the case of intellectual property.

During the complex process of assessing needs and resources involved in intellectual property a

special place is held by the allocation proceedings, to be designed and treated not as a simple econometric criteria optimization, but put in touch with the existing property relations in the company’s economic, legal, and office environment. And this is so because industrial property is the one taking all the resources, managing them into the spectrum resulted from the allocation.

The conflicts from the sphere of intellectual property manifest in the form of tensions and the form of crises. Infringement of intellectual property rights follows three main ways: not guarantying some forms of intellectual property; intellectual property abstractization, by emptying its social content; the separation of the decision relations from the intellectual property relations.

At the forms mentioned above, two new forms are added, namely:

- the institutional crisis, a type of crisis specific not only to intellectual property, being manifested in two forms: the inadequacy of some of the organizations and institutions to the specific realities and the absence of some formal institutions and the necessary forms for a democratic society;

- the intellectual property moral crisis, whose solution is treated differently and sometimes ineffective.

Fighting against intellectual property crises, alongside other sciences, management and especially general management, politic management, legal management, public administration management, play a major role. At the basis of this process it is necessary to place the principles of general management and those that can be attached to the prevention and eradication actions. It also appears necessary that the process of restructuring and improvement of intellectual property relations not only be conducted in accordance with the principles, but also with the requirements of management of structural adjustment and microeconomic reform.

The conflict management can be successfully used to control tensions, strains and worries, and partly, some longer crises of intellectual property and the rights of intellectual property. In this regard one will seek to address the qualitative nature of the managerial aspect, generating social relationships. A special area is the management of ensuring intellectual property, with a variety of areas: retrospective, synchronous and prospective. At the same level of treatment there are issues regarding the management of stimulation and of prohibition measures of the regulatory system for restoring and promoting intellectual property and the orientation to reconsidering, forming and strengthening

intellectual property rights. And just as important to us it is the issue of managing to translate into reality the exercise of the property right at the microeconomic and microsocial level.

3 Property intellectual in specific critical conditions

In the register of specified critical conditions, intellectual property is attached to economic, legal, psychosocial, managerial events or episodes that are sometimes out of the normal state of affairs, tending to become regular, with consequences ranging on the situational aggression scale. Therefore, intellectual property subjects must carry out extensive analysis, supported by a rich documentary material, having the responsibility to take into consideration what has been gained in the theory and practice of intellectual property in specific critical conditions. On this basis, they will put on different “figures of intellectual property in specific critical conditions” by highlighting the intra and intersubject mechanisms in organizational context. During treatment, psychosocial, legal, economic and managerial data will be integrated, focusing on what happens with the break, the conflict, the risk and the crisis. A relatively random assembly will be appealed to, being potentially subject to the analysis of some phenomena and processes taking place in the intellectual property in the specific critical conditions. This mix will be placed in the centre of each approach and the power to produce good structures to support the economic, legal, psychosocial, managerial components of intellectual property will be used.

The causes which generate pressure and tension in intellectual property in specific critical condition are numerous. We have selected some of them, richer in meaning:

- not putting together the psychosocial component with the legal and managerial ones while treating the issue of intellectual property. The concept of intellectual property concerns, in general, the fact that a certain creation, intellectual in nature, belongs to its real author or to the author whose efforts made it alive. It is noted that this definition does not take into account the involvement of the human factor, any possibility of transmission, subsequent to its emergency, of the right of exploitation of the work, with its entire psychosocial, managerial train, alongside the legal one. These issues can be found in Figure 1.

- many companies, especially the big ones, do not give sufficient importance to the protection of

intellectual property rights. They do not really seek to recover investments made in research, development and innovation. They do not care of all the components of intellectual property rights, namely patents, trademarks, industrial designs, domain names and copyrights.

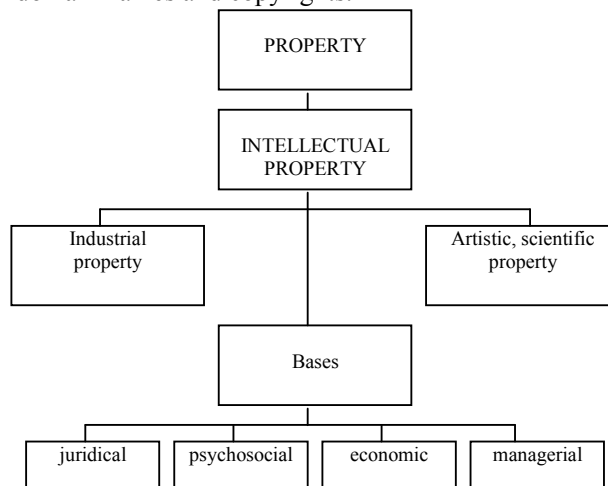


Fig. 1. Bases of intellectual property

- failure generating states of pressure and tension can be found within industrial property. Thus, the utility model, in some cases it is not included in the inventions and innovations. Regarding the industrial design or pattern, they cannot single out the aesthetic elements of products in all cases. Regarding the brand, trade and services it is found that, in many situations, the used hallmarks do not permit to identify the manufacturer, the dealer or the supplier of services, i.e. the function provided by the product and its quality.

- in respect of trade names one can notice insufficient concern for adopting specific measures to prevent unfair competition.

- and, last but not least, know-how is not enough fully protected. The know-how agreement is not addressed as a contract of technical knowledge communication. Quite often it is used as an accessory of the patent license agreement.

4 Conclusions

Addressing the topic of “Intellectual property in critical condition”, we started from the desire to elucidate a poorly mastered theoretically and practically area, namely the fundamental changes in the contemporary world arising from the Economy, Organization and Management based on knowledge and their implications in intellectual property. To achieve such a work we analyzed the overall

objectives in terms of three levels: theoretical, methodological and practical.

From the theoretic point of view, we presented the necessary principles, technologies, steps and requirements related to intellectual property in critical conditions.

In terms of methodology, we have outlined the Romanian and international, economic, psychosocial, legal, and managerial framework where there is intellectual property in critical conditions.

On a practical level, we made a study about the implications of critical conditions in intellectual property. The study was conducted through an extensive questionnaire in seven counties across the Central 7 Region.

Since the essential characteristic, dominant in the XXIst century is change, we took into account the fact that it reinforces the revival, but also uncertainties, risks and tensions. In our paper we have treated the change both as an opportunity and as an incentive for improvement.

We emphasised the risk-taking courage, confidence to assess reality, how to overcome crisis situations, lack of competence, beneficiaries' confidence development, the code of ethics in intellectual property, intelligence, courage and the action ability in critical conditions.

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