



PROBLEMS OF THE CONTENT OF KNOW-HOW IN INTERNATIONAL LAW

Nadirkbekova Umida Karamatdin qizi

Master at the University of World Economy and Diplomacy

Raimova Nargiza Doroyevna

Doctor of Sciences in Law, Professor of the Civil Law and International Private
Law Department of the University of World Economy and Diplomacy

<https://doi.org/10.5281/zenodo.16949927>

Abstract: This thesis examines the content of the concept of know-how in international law and the main problems of its interpretation. It analyzes the fact that the concept is applied differently across various countries, that it is not fully covered in the TRIPS Agreement, and the ongoing debates on whether know-how should be included as an object of intellectual property.

Keywords: know-how, trade secret, manufacturing secret, intellectual property, TRIPS Agreement, EU Directive, confidential information, legal issues.

In the field of protecting manufacturing secrets, the international legal interpretation of the concept of know-how and the problems related to its content are characterized by specific complexities. Although the term know-how was originally used to denote technical knowledge, manufacturing practices, and confidential technologies, today its definition and content lack clear and uniform criteria at the international level. This situation creates significant difficulties in developing effective mechanisms for the protection of know-how.

The biggest challenge in achieving a clear and uniform definition of know-how in international law is that the concept is interpreted differently across states and legal systems. For example, in the European Union and the United States, know-how is understood within the scope of trade secrets, whereas in China it is more closely linked to commercial secrets and based on different legislation. Furthermore, in some countries, the notion of know-how is partially covered under copyright or patent protection, which leads to legal confusion.

In addition, international conventions and agreements lack clear and universal principles for defining the content of know-how. For instance, Article 39 of the TRIPS Agreement establishes requirements for the protection of trade secrets but does not directly employ the term “know-how.” This article sets out three main conditions for the protection of trade secrets: the information must be secret, have commercial value, and not be disclosed unlawfully. However, these criteria are insufficient to define the broad scope and precise boundaries of know-how[1].



The 2016 Directive 2016/943 of the European Union attempted to provide a clearer definition of know-how (trade secrets). This document defines know-how as “information which is secret, has commercial value because it is secret, and has been subject to reasonable steps to keep it secret, in the context of trade or professional activity.” At the same time, the directive applies the following criteria to know-how: secrecy, commercial value, and protection against unlawful disclosure. Although the directive requires all member states to adopt these principles as a common standard, in practice they may be understood and applied differently in each state [2].

The term know-how was first used in a U.S. court in 1916. Translated from English, know-how literally means “to know how to do it,” derived from the phrase “to know how do it” [3].

In foreign legal systems, alongside the term “know-how” (U.S., U.K., Germany), other concepts have also been used, such as “trade secret” (U.S.), “secret de fabrique” (manufacturing secret) and “savoir-faire” (know-how) (France), which later entered Russian legal terminology as idiomatic terms. There is an interrelation between the definitions of “manufacturing secret,” “trade secret,” “know-how,” “industrial secret,” and other forms of confidential information[4].

The 7th section of the TRIPS Agreement, devoted to this concept, is entitled “Protection of Undisclosed Information.” Article 39(2) of this section provides: “Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices. Such information: is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; has commercial value because it is secret; and has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret” [5].

When discussing problems related to the content of know-how, particular attention should be paid to the issue of including it among intellectual property objects. This has been a matter of debate in legal scholarship for many years. Although Article 1466 of the Civil Code of the Russian Federation directly provides for absolute rights to manufacturing secrets, there remain a number of problems in both legal scholarship and international practice [6].



For instance, Professor I.A. Zenin expressed the following view regarding the attribution of know-how to intellectual property: “Unlike a patent-protected invention, know-how does not enjoy absolute rights, but only a practical monopoly... The legal regime of know-how is not about protecting know-how as such, but about ensuring, through different areas of law, the legal protection of the property interests of the know-how owner (creator, purchaser)” [7, pp. 7–14].

At the same time, the author also notes in his article: “Like copyright contracts and patent licenses, know-how can be transferred to another person by contract, either on exclusive or non-exclusive terms.” Thus, although the author did not fully consider know-how as intellectual property, he nevertheless recognized that it possesses several important features characteristic of intellectual property objects.

Another scholar, V.I. Yeremenko, writes: “Information, including know-how, as an intangible object generally represents the result of human intellectual activity with a high degree of creative potential. At the same time, information, in particular trade secrets (know-how), cannot be equated with intellectual property objects” [8, p. 44].

It is evident that, to this day, there is no consensus in either scholarship or practice regarding the necessity of including know-how among intellectual property objects. Consequently, know-how continues to remain a legally problematic object, and given its expanding use in international relations, there is an urgent need to unify and clearly regulate it in law. To address these issues, it is essential for the international community to develop common definitions and standards and to harmonize national legislation with global requirements.

References

1. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) <https://www.wipo.int/wipolex/en/text/500864>
2. DIRECTIVE (EU) 2016/943 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 8 June 2016 <https://eur-lex.europa.eu/eli/dir/2016/943/oj/eng>
3. Ch. Amelin KE The concept of "know-how" // Foreign trade law. - M.: Jurist, 2006. - No. 2. - P. 13–20.
4. Intellectual Property. Textbook. Eds.: Doctor of Law, Prof. O. Oqiyulov; PhD in Law, Assoc. Prof. N.E. Gafurova // Author collective. – Tashkent: Tashkent State University of Law Publishing, 2019. – 588 p.
5. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (WTO, Uruguay Round of multi-party negotiations, April 15, 1994) //





Minkov A.M. International Protection of Intellectual Property - St. Petersburg: Piter, 2001. - P. 676–719.

6. Civil Code of the Russian Federation, Part 4 (CC RF Part 4), December 18, 2006, No. 230-FZ

https://www.consultant.ru/document/cons_doc_LAW_64629/

7. Zenin I.A. Commercial secret and know-how // Legislation. - 2005. - No. 12. – P. 7–14.

8. Yeremenko V.I. World Trade Organization and the legislation of the Russian Federation on intellectual property // Legislation and Economics. - 2006. - No. 10. – P. 35–47.1

