

Tsybulev¹, P.N. and Korsun², V.F.

¹ Institute of Intellectual Property of Odesa Academy of Law National University, Kyiv

² Ukrainian Research and Technology Center, Kyiv

COMMERCIALIZATION OF INTELLECTUAL PROPERTY BY UNIVERSITIES AND RESEARCH INSTITUTES: U.S. EXPERIENCE AND POSSIBILITIES FOR ITS USE WITHIN UKRAINE



The model of intellectual property commercialization in the U.S. universities is discussed. To a large extent, the success of this model is based on three fundamental conditions proceeding from the Bayh-Dole and the Stevenson-Wydler laws: a) the universities and federal laboratories are granted with ownership rights to intellectual property developed at the expense of federal funds, b) the universities and federal laboratories are charged with responsibility and obligation to commercialize these rights, and c) the royalties and licensing fees are shared between the university or laboratory and the inventors. The authors propose to enshrine in the law the developer's responsibility for the transfer of intellectual property created at the expense of public money to the industry.

Key words: intellectual property, commercialization of an intellectual property, and US experience.

Currently, in the advanced economies, the main factors underlying the competition are business-oriented innovation and research [1]. At the end of 2012, more than 200 000 patents and intellectual property licenses were registered [2, 3]. This proves a high innovation potential of Ukraine. At the same time, in the last five years, the share of innovative products in the total industrial output decreased by half and made up only 3.8% [4]. According to the World Economic Forum, in 2011–2012, Ukraine was ranked 82nd among 142 world countries by innovation availability. On the one hand, Ukraine has a significant innovation potential, but on the other hand, the level of production innovativeness is very low. Such a situation means that this potential is poorly utilized by the industry and this problem should be addressed urgently.

The advanced countries solve the problem of transfer and use of intellectual labor results (primarily, intellectual property) in the industry

through the creation of national innovation systems (NIS). The national innovative system is a body of national public, private, and non-governmental organizations and mechanisms of their interaction, within the framework of which, they actually collaborate on the creation, promotion, and industrial application of intellectual property [5]. The United States, Japan, Korea, England, France, and other countries have successfully implemented their own models of intellectual property commercialization. Having compared the data on how effectively these countries transfer the technologies from the research institutions to the business, the U.S. model is established to be the best by major indicators [6].

The aim of this research is to study the U.S. experience in the commercialization of intellectual property and ways it can be used in Ukraine.

The United States has achieved the greatest success in technology transfer because it built an effective model of intellectual property commercialization, which optimally combined the efforts

of the government, the research institutions, and the business in promoting the industrial application of research. However, the United States was not always successful in this field. One reason was that in 1980, the rights to intellectual property created at the expense of public funds belonged exclusively to the government. This model proved itself to be ineffective, inasmuch as only 5% of government inventions was licensed and only 1% was successfully implemented in the industry. The situation improved dramatically as in 1980, Congress had passed two complementary laws: the Bayh-Dole Act and the Stevenson-Wydler Act [8, 9]. The Bayh-Dole Act gave the universities, nonprofit organizations, and small businesses the right of ownership to inventions funded at the expense of government money.

The key provision of the Stevenson-Wydler Act implies that the inventions funded from the federal budget must be licensed for commercial use for the public sake. The R&D institutions should provide the Federal agency (upon request) with periodic reports on efforts to utilize the inventions.

The Bayh-Dole Act provides for the following purposes:

- ✦ To facilitate the practical use of inventions created within the framework of federally funded research;
- ✦ To engage as many small business entities as possible in federally funded research;
- ✦ To promote cooperation between business corporations and nonprofit organizations;
- ✦ To ensure the use of all inventions created by nonprofit organizations and small businesses in the spirit of free competition and entrepreneurship;
- ✦ To promote the commercialization and public availability of inventions made in the United States;
- ✦ To provide the government providing with sufficient rights to inventions created at the expense of public funds in order to meet the needs of government and to protect the society from disuse or misuse of inventions;
- ✦ To minimize the administrative expenses in this sphere.

This law focused the attention of universities and federal laboratories on three key points:

- 1) The universities and federal laboratories are provided with rights to any discoveries, inventions, patents, and technologies developed at the expense of federal funds;
- 2) The universities and federal laboratories got the right to license and to commercialize the results of their researches;
- 3) If the universities or federal laboratories received fees, royalties or income from interest in startup equity capital, they had to divide the revenue between the university and the inventors as agreed previously.

The Stevenson-Wydler Act gave broad powers to the Ministry of Commerce for enhancing the role of technological innovations for commercial and governmental purposes and supporting the technology transfer at the national level. Given the fact that the federal laboratories have a significant part of commercially valuable technologies that could contribute to raising the competitiveness of firms in the United States, the Act requires from each federal laboratory to establish a technology transfer office (TTO) for identification of commercially valuable technologies and their subsequent transfer to the private sector.

Both Acts are aimed at creating a favorable environment for the development of mutually beneficial cooperation between the private and public sectors. In addition to the above mentioned acts, in the United States, the innovative activity is governed by other regulations [10–16]. However, the reference to the Bayh-Dole Act is the most often insofar as it is the general and comprehensive regulation. The rules laid down in this Act ensure the continuity of intellectual property commercialization process.

Let us consider the schematic diagram of intellectual property commercialization in the United States as exemplified by the Maryland Technology Development Corporation (TEDCO) (Fig. 1).

According to this scheme the innovation life-cycle consists of four steps: 1) *research*, 2) *product development*, 3) *production*, and 4) *sale of prod-*

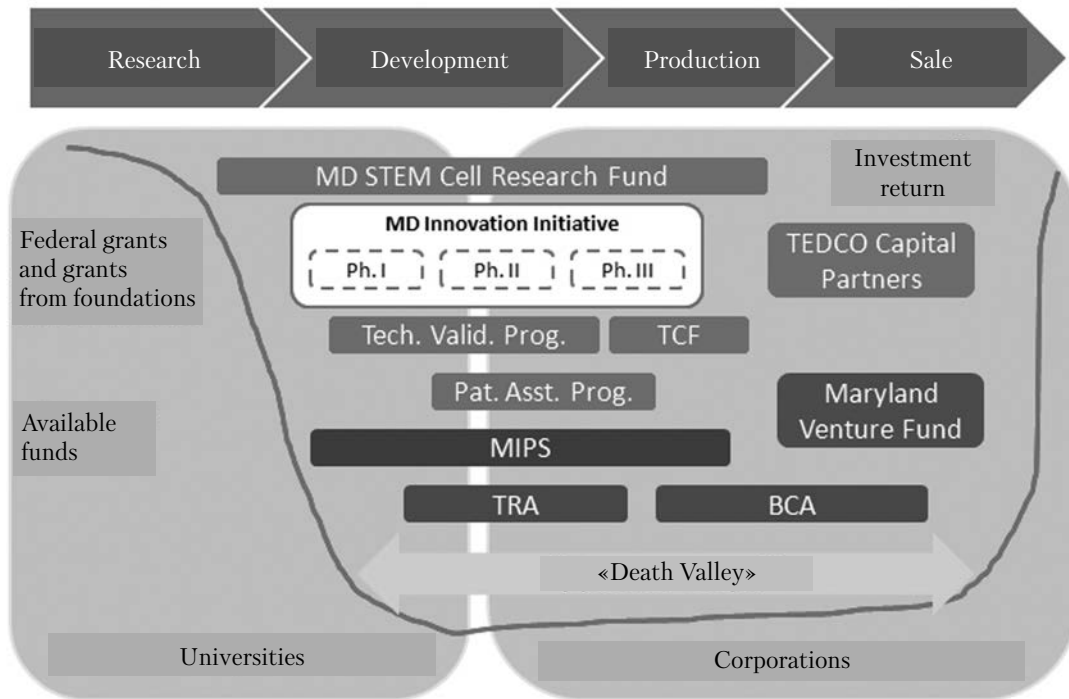


Fig. 1. Schematic diagram of intellectual property commercialization by Maryland Technology Development Corporation (TEDCO)

ucts (marketing). The research and the development are within the competence of universities and national laboratories, while the other two stages, the production and the sale, belong to responsibility of industrial enterprises.

According to this model state is funding research through an extensive network of foundations and programs. The money is spent mostly on research. However, they are not sufficient for the product development that, on average, costs 10 times more than the research (left curve in Fig. 1). The industrial companies want to finance the marketing. However, they do not want to provide funding for the production and the product development, inasmuch as these stages are associated with greater risk (right curve in Fig. 1). Hence, the so-called «death valley» appears between the research and the marketing.

In the United States, a flexible and deeply layered system of foundations and programs has been created to overcome this valley and to build a bridge between the science and the market. Among

them there are: federal funds, funds of states, counties, cities, business angels, private corporations, and others. The federal funds are raised as follows: the state allocates money to 11 ministries and demands to deduct a certain percentage to federal funds. For example, the ministries which receive funding of more than USD 100 billion have to deduct 2.7% of the funding received to various foundations and programs. These funds are quite large. For example, the budget of Small Business Innovative Research program (SBIR) amounted to USD 2.7 billion, while that of the National Science Foundation (NSF) was USD 7 billion (in 2010).

Let us consider the example of Maryland Technology Development Corporation. The Corporation was founded by the State of Maryland (by the way, the population of Maryland is 6 million people versus 46 million living in Ukraine.). It has 15 fulltime and 5 part-time employees. The State of Maryland created an investment fund of USD 84 million, at the expense of taxes and duties. 20 million of them were trusted to the Foun-

dation. The Foundation provides funds to universities in three stages (Fig. 1).

It allocates to the university USD 100–120 thousand for conducting research, *at the first stage*, USD 10–15 thousand for developing business plan, *at the second stage*, and USD 100–120 thousand for facilitating the commercialization of technology, *at the third one*. The Foundation also provides financial support to enterprises/corporations. However, to get the money, the corporation must either be licensed by the university, or have a joint project with a national laboratory.

The Foundation effectiveness is measured by the following criteria:

- ✦ The number of new companies created;
- ✦ The number of new jobs;
- ✦ The size of investments.

Thus, the fund has invested USD 15 million to 200 universities. The projects supported by the Foundation have yielded a profit of USD 500 million. Every year, the Foundation submits its annual report to the Meeting of the State.

Technical universities play an important role in the creation and commercialization of intellectual property in the United States. Each technical university has its specific features, but the basic scheme of intellectual property commercialization is the same. Let us consider how this scheme works as exemplified by one of the most successful universities, the University of California in San Diego (hereinafter referred to as the University). Suffice to say that the five Nobel prizewinners worked in the University. All issues related to intellectual property at the University are addressed through the Technology Transfer Office (TTO) which is a structural unit of the University (in other universities, it may be separated as a nonprofit organization owned by university). To successfully manage the University's intellectual property the TTO staff has appropriate qualifications and knowledge in the field of intellectual property, licensing, and contract law. They comprehensively understand the realities of business and are able to anticipate new market trends.

The TTO Director is subordinated to the Principal of the University. In this University the TTO has 30 employees. It has in its structure the following units:

- ✦ Licensing group;
- ✦ Information group;
- ✦ Patent management group (works with law firms from the approved list);
- ✦ Financial management group (submit reports annually);
- ✦ Licensee search group (so far, consists of one employee).

The TTO key objectives are as follows:

- ✦ Management of IP rights;
- ✦ Assessment of potential commercial value of inventions;
- ✦ Advertising and marketing of inventions for the purpose of licensing or creation of *spinoff* companies;
- ✦ Licensing of IP rights;
- ✦ Distribution of royalties between the University and the authors.

To deal with patenting the TTO outsources patent attorneys (the cost of patent application in the United States can range from USD 5000 to USD 10 000). If necessary, the TTO can engage other experts. Firstly, the experts should determine whether the invention is patentable, i.e. whether it meets three criteria: a) novelty and uniqueness, b) unobviousness, and c) usefulness. The second step is to determine the commercial value of invention and its potential as a product or a significant process improvement.

The TTO philosophy is to carry out marketing and advertising for all the University's innovations and to provide all corporations with equal access to them. In order to encourage the creation of quality innovation, the TTO concentrates its efforts on training and explanatory work with teachers and researchers.

The commercialization of University intellectual property begins with the disclosure of invention or other intellectual property object by inventor(s) to TTO employees (Fig. 2). The TTO employees consider (estimate) the inventor's ap-

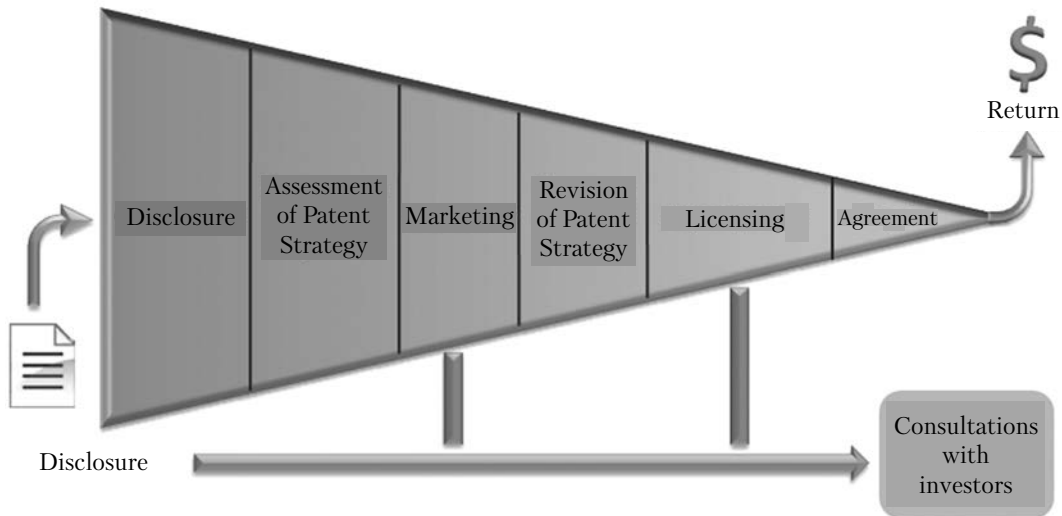


Fig. 2. Schematic diagram of intellectual property commercialization in the University of California, San Diego

plication with respect to utilization of the invention. If the TTO decides to promote the invention, it moves to the second stage, the definition of patent strategy.

The United States patent law provides for filing «preliminary application» which is valid for 12 months. In most cases, the TTO takes this opportunity. The «preliminary application» allows the researchers to do presentations at conferences and to publish articles related to invention or discovery, insofar as it protects the inventors for 12 months and gives them a priority date for the invention.

The cost of «preliminary application» is much less than the costs associated with obtaining a patent of the United States. During these 12 months the TTO finds how the inventor is going to commercialize the invention and conduct a preliminary search of licensee.

The third stage is marketing. This stage includes:

- ✦ Publication of information about technology on TTO webpages;
- ✦ Publication of information about technology in webpages of all universities;
- ✦ Special publications;
- ✦ Publication of brochures about new technologies;

- ✦ Mailing of a monthly bulletin containing descriptions of new technologies to subscribers;
- ✦ Exchange of information at conferences and other events;
- ✦ Face-to face communication with selected corporations (mail correspondence is assumed to be ineffective);
- ✦ Face-to face communication with angel investors and representatives of venture funds (including, venture funds of states);
- ✦ Cooperation with innovation broker (without commission fee);
- ✦ Contacts with inventors who can recommend potential licensee.

The TTO main task at this stage is to find a licensee. It is not engaged in marketing as such. The researcher himself is believed to be the best marketer.

The next phase is review of patent strategy. If at the stage of market research a licensee is found the TTO starts to formalize a full patent. As a rule, the potential licensee takes part in paying the costs associated with patent registration. Approximately 60% of preliminary applications reaches this stage. If no licensee is found, the TTO usually refuses to spend on patenting and notifies thereof the funding organization. In this case, the

rights are transferred to the State, as the university belongs to it. If the State waives these rights, they are transferred to the inventor. However, such cases have been very few in number so far.

The process of submission and consideration of patent application can last 3–5 years until the patent is issued by the U.S. Patent Office. Therefore, having filed the application the TTO immediately moves to the next stage, licensing. At this stage, it seeks for investors to create a *spinoff* company. This is the key part of the TTO responsibility. In the course of licensing the TTO carries on negotiations with licensees on economic issues (the size of royalties, exclusive territory, type of license, etc.).

Another form of commercialization, in addition to licensing, is the creation of *startup* companies based on the most promising inventions that have significant potential in the market and so new and innovative that could change the industry and the market (the so-called «*breaking through*» or *revolutionary technologies*). In this case, the TTO transfers to new company the information on the intellectual property rights, brings together the stakeholders, but does not invest the University's money in the company. The TTO does not force the researchers to work with the licensee. Sometimes, licensees or *startups* themselves enter into a separate agreement on consulting services with researcher or university graduates are employed by licensee or *startup* and bring the necessary knowledge to the corporation.

The University receives from licensees and *startups* the royalty, usually at a rate of 3% of sales, which is at least USD 5–6 (sometimes, more than 10) million annually. The royalty received from licensing covers the TTO costs related to patenting. Having deducted from royalty the costs related to patenting the TTO distributes the remaining amount as follows: 35% goes to inventors; 15% is assigned to scientific laboratory or structural unit contributing to the invention (9% goes to the laboratory, 6% is directed to the department); 50% is transferred to the University's fund.

For the copyright items this distribution is as follows: 33% goes to the University's fund, 34% belongs to the authors, and 33% is transferred to the structural unit contributing to the copyright item.

Thus, the University has managed to organize a sort of conveyor which through licensing and creation of *startups* «pushes» the intellectual property objects created at the University at the expense of public money to the industry. The University receives royalty from licensing and redirects it to disclosure, patenting, and licensing. This «conveyor» has been successfully operating in the United States more than 30 years. The government gives money to the universities for research and does not require paying it back. The universities create intellectual property and transfer it to the corporations. The corporations create jobs and produce innovative products. The taxes are transferred to the federal budget, with a part of them going to funding of science.

The Director of TTO Licensing Department *Wendy Shi* said that the main indicator of TTO performance was the number of license agreements and new *startups*. Of course, the evaluation of TTO effectiveness takes into consideration the number of invention disclosures and issued patents, received royalty payments, and investments. However, money-making is not a TTO responsibility. Much more important is the transfer of intellectual property to the industry. The financial effect appears after the sale of innovative products.

Thus, the TTO plays a role of catalyst: spending a relatively little money on licensing it contributes to generation of large financial flows in the industry and induces significant contributions to the budget, from which the University is funded. In addition, the Technology Transfer Office is engaged in creating new jobs in the high-tech field. This makes the national economic system more competitive and brings new investments into the economy.

The royalty received by TTO is important despite the fact that it is only about 1% of the University budget for science. The above mentioned

foundations and programs do not fund universities routinely, as the researchers have “to fight” for money. The grant makers closely monitor the university’s success in the commercialization of intellectual property: the number of sold licenses, new *startups*, the amount of royalties and investments received.

Table 1 shows the results of University of California System which is an association of 10 universities in California for the year 2011. As Table shows, the leader is the University of San Diego (UCSD) which concluded 46 license agreements with industry and created 13 startups in 2011 (the number of students and teachers of the University is twice less than in the *Kyiv Polytechnic Institute National Technical University (Ukraine)*).

From Table 1 one can see that in 2011, the University of California made 246 license agreements and created 59 *startups*. Table 2 presents the financial results of the University of California for 2011.

Thus, the United States has built an effectively operating system of intellectual property commercialization, which implies creating new jobs, increasing manufacture of innovative products

and making significant contributions to the federal budget.

In Ukraine, 80% of intellectual property is created by the institutes of the Academy of Sciences and by universities. They are at the forefront of intellectual property commercialization. However, for some reasons their effectiveness in this sphere is very low. For example, the leader of Ukrainian technical universities, *KPI National Technical University*, sells, on average, one license per year. The National Academy of Sciences of Ukraine earns only 17% of its total budget (as of 2011); the share of royalty from licenses sold in the total funding is negligible. Because of the lack of funding the National Academy of Sciences can neither purchase research equipment and instruments nor patent inventions abroad in the PCT system, which is of serious hazard to the existence of Academy. In this situation it is necessary to find new sources of funding for science as soon as possible.

To address this problem the Ukrainian Research and Technology Center provides academic institutes and universities with financial support for the intellectual property commercialization through creating partnerships, startups, and in-

Table 1

Results of the University of California Related to Intellectual Property Commercialization in 2011

University	Disclosure of invention*	Applications for U.S. patent	U.S. Patents issued	Licenses on invention and options*	Startups
UCSD	388	239	88	46	13
UCLA	299	345	56	46	19
UCSF	173	96	41	40	3
UCD	184	113	23	27/31†	5
UCB	171	163	44	45	5
UCI	178	103	30	25	3
UCSB	64	124	46	14	4
UCR	74	60	11	12/9†	5
UCSC	59	39	7	2	1
UCM	16	30	2	1	1

* UCOP annual report does not include copyright licenses and disclosure.

† The second figure is the number on licenses on plants.

Source: UC IAS Technology Transfer 2011 Annual Report.

dustrial licenses. Some institutions have already established such companies.

Until recently, this process has been hampered by uncertainty of legal status of these companies. For being nonprofit organizations, the universities and institutes of Academy of Sciences were considered not to be entitled to establish potentially profitable *startups*. The rights to intellectual property created at the expense of the public funds were believed to have to be possessed by the state. Thus, the institutes having no rights to intellectual property were uninterested in its commercialization.

On October 2, 2012, the Law of Ukraine on the state regulation of activities in the field of technology transfer as revised came into effect. It secures the rights in intellectual property created at the expense of public money for the developers, i.e. universities and academic institutes. In fact, this is the same as the American Bayh-Dole Act which has been working well more than 30 years in the United States. However, the Law of Ukraine does not contain the other important provision stated in the Stevenson-Wydler Act. This provision obliges the national laboratories to introduce the intellectual property objects

into the economy i.e. to contribute to its commercialization. It is advisable to amend the Law of Ukraine on technology transfer accordingly and to provide regulatory and financial support for the implementation of this regulation.

Hence, in order to ensure that Ukraine enters the path towards innovative economic development, it is necessary to build a bridge between the science and the industry. For this purpose the research organizations should immediately do their best to introduce the intellectual property into the economy, primarily through making licensing agreements and selling licenses to startups incorporated by business entities on the basis of licensed intellectual property, as well as through providing them with scientific advice.

It does not mean that the mere use of U.S. experience in intellectual property commercialization by Ukraine will solve the financial problems of Ukrainian universities and academic institutions. However, the American experience in commercialization will act as a catalyst for launching a scheme of continuous promotion of research results in the industry and its use will certainly lead to a significant increase in the sales of innovative products. To make the American model of intel-

Table 2

Financial Results of the University of California in 2011 (USD thousands)

University	Total funds for research	Adjusted gross revenue from licensing*	Legal and other direct fees	Reimbursement	Licenses on invention and options
UCSF	1,064,604	25,263	4,196	2,509	40
UCLA	1,077,641	13,597	6,298	5,088	46
UCSD	960,241	13,727	5,036	4,164	46
UCB	717,250	92,741	5,010	2,497	45
UCD	684,000	10,231	2,484	887	27/31†
UCI	455,214	5,997	2,144	1,321	25
UCSB	184,000	2,457	2,763	2,730	14
UCSC	126,000	40	259	43	2
UCR	100,413	5,437	837	708	12/9†
UCM	50,809	26	497	27	1

* MTA, revenues from copyright and co-holder payments are not included.

† The second figure is the number on licenses on plants. The amount is denominated in USD thousands.

Source: UC IAS Technology Transfer 2011 Annual Report.

lectual property commercialization effectively working in the universities of Ukraine it is necessary to create an extensive network of innovation funds and programs at the government level, in regions, cities, and districts, as well as to initiate the creation of such funds by large enterprises, venture capitalists, and others.

The Government of Ukraine, the National Academy of Sciences of Ukraine, the Ministry of Education and Science of Ukraine, and the State Agency for Science and Information System Development should carefully study the model of intellectual property commercialization used by U.S. universities in the recent 30 years. It is necessary to learn from the mistakes and experience of others, to build a solid foundation for converting scientific discoveries into copyrighted technologies and innovative products manufactured and sold in Ukraine and abroad through partnerships with investors and enterprises in other countries. The innovative products will facilitate the creation of jobs in Ukraine, while the innovation corporations will generate extra income tax. In so doing, Ukraine will become competitive in the global knowledge market due to efforts in education, scientific discoveries, inventions, and technology transfer. At this stage, it is necessary to encourage young people to work in research and engineering institutions of Ukraine utilizing their educational and business experience.

Ukraine has expertise, experience, and rich potential for innovations, so it must inevitably reach the level of advanced countries like France, Germany, Japan, and the United States. In the United States it did not happen overnight, but today, the technology transfer model works successfully. It is necessary to find a way to develop and to implement similar models in Ukraine.

CONCLUSIONS

In order to significantly raise the effectiveness of intellectual property commercialization the universities and research organizations in Ukraine should take into consideration more than 30-year successful experience of the United States in this area and:

1) Focus the ultimate goal of applied research on creating new jobs related to the manufacture and marketing of innovative products;

2) Amend the Law of Ukraine on state regulation of activities in the field of technology transfer with a provision that would oblige the national universities and academic institutes to promote the commercialization of intellectual property created at the expense of public money.

The authors understand that this proposal can cause a lot of objections and are ready for constructive discussions;

3) The Government of Ukraine should initiate the creation of an extensive network of funds and programs at the level of central government, regions, cities, districts, businesses, associations, etc. to support the technology transfer;

4) For improving the national innovation system it is necessary to use the U.S. experience primarily for achieving the objectives set out in the Bayh-Dole Act allowing for the economy of Ukraine.

The first author studied the U.S. experience in March and April 2013, within the framework of the Special American Business Internship Training Program of Department of Commerce (SABIT) «Intellectual Property: Commercialization of Technologies» [7]. The second author has many years of practical experience in the intellectual property commercialization working as Vice President for business development in the main research laboratory at the American Radio Corporation (David Sarnoff Research Center) in Princeton (NJ) under the Drexel University of Technology, as Director of the Technology Transfer Office at the Hahnemann Medical University and as United States Deputy Executive Director of the Ukrainian Research and Technology Center (Kyiv, Ukraine).

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П.Н. Цибульов, В.Ф. Корсун

КОММЕРЦІАЛІЗАЦІЯ ІНТЕЛЕКТУАЛЬНОЇ
СОБСТВЕННОСТІ УНІВЕРСИТЕТАМИ
И НАУЧНЫМИ ОРГАНИЗАЦИЯМИ: ОПЫТ США
И ВОЗМОЖНОСТИ ЕГО ИСПОЛЬЗОВАНИЯ
В УКРАИНЕ

Рассмотрена модель коммерциализации интеллектуальной собственности университетами США. Успешность

этой модели в большой степени обеспечивается тремя принципиальными условиями, вытекающими из законов Бая-Доула и Стивенсона-Уайдлера: а) университетам и федеральным лабораториям переданы права на интеллектуальную собственность, разработанную за федеральные средства; б) на них возложена обязанность коммерциализировать эти права, а также в) делить полученные от коммерциализации деньги между университетом и изобретателями. Авторы предлагают закрепить законом за разработчиком обязанность передавать промышленности интеллектуальную собственность, созданную за государственные деньги.

Ключевые слова: интеллектуальная собственность, коммерциализация интеллектуальной собственности: опыт США.

П.М. Цибульов, В.Ф. Корсун

КОМЕРЦІАЛІЗАЦІЯ ІНТЕЛЕКТУАЛЬНОЇ
ВЛАСНОСТІ УНІВЕРСИТЕТАМИ
ТА НАУКОВИМИ УСТАНОВАМИ:
ДОСВІД США ТА МОЖЛИВОСТІ ЙОГО
ВИКОРИСТАННЯ В УКРАЇНІ

Розглядається модель комерціалізації інтелектуальної власності університетами США. Успішність цієї моделі великою мірою забезпечуються трьома принциповими умовами, що витікають із законів Бай-Доула і Стивенса-Уайдлера: а) університетам та федеральним лабораторіям надані права на інтелектуальну власність, що розроблена за федеральні кошти; б) на них покладено обов'язок комерціалізувати ці права; в) розподіляти отримані від комерціалізації кошти між університетом та винахідниками. Авторі пропонують законодавчо закріпити за розробниками обов'язок передавати до промисловості інтелектуальну власність, створену на державні кошти.

Ключові слова: інтелектуальна власність, комерціалізація інтелектуальної власності, досвід США.