PROBLEMS OF APPOINTMENT AND CONDUCTING OF FORENSIC EXAMINATION IN COMMERCIAL PROCEEDINGS

One of the main conditions for the construction and functioning of the rule of law is the legal regulation of all spheres of human activity, the creation of a reliable effective legal mechanism of state protection of all natural and acquired rights of people, in accordance with their legal status. The rapid growth of the needs of modern society in the use of knowledge from various fields of science, technology, art, crafts does not bypass such a public sphere as the sphere of legal proceedings, and understanding the importance of special knowledge for establishing the truth in an economic case gives grounds to consider forensic examination as an independent institution for the protection of rights and the legitimate interests of citizens, legal entities and the interests of the state in general. Any branch of law has its own branch institutions. In cases where a particular institution combines the norms of two or more branches of law, it is considered to be intersectoral. A separate legal institution is a set of norms regulating a certain group of legal relations, which are personified due to their specificity. Integration of the achievements of various sciences into the practice of proving is a natural and traditionally studied phenomenon for economic legal proceedings.

But the constant development of all social processes and relations determines dynamic processes in the sphere of their legal regulation, which are reflected in the changes in the relevant regulatory legal acts. As a result of the intensification of legislative activity in Ukraine, which has manifested itself in recent years, there is not only inconsistency of the provisions of certain regulatory legal acts with each other, but also a contradiction with constitutional principles, and in some cases with the laws of scientific development of certain branches of knowledge. Unfortunately, such processes are inherent in such an important state institution as justice, and its individual institutions, in particular, forensic activities.
In connection with the above, there is a need to analyze the problematic issues of the appointment and conduct of forensic examination in commercial proceedings.

Keywords: forensic science in commercial proceedings; specific expertise; expert conclusion; research on impressions of seals and stamps in the questioned document examination (QDE); forensic science in the field of intellectual property.

Formulation of Research Problem. Forensic examination is an independent scientific field, within which a general theory has been developed and its place in the system of scientific knowledge has been determined. Today, it is one of the main means of proving the circumstances in commercial disputes, because in the process of administering justice, the court is faced with the need to establish the circumstances, the data of which require special research and knowledge.

In practice, more and more often in the economic process there are cases when the establishment of relevant circumstances or facts becomes key in the process of proof. In this regard, the conclusion of the forensic examination is important and, accordingly, the issues related to their appointment and conduct require in-depth study.

The article draws attention to the problem of substantiation of the petition for the appointment of expertise, the correct formulation of questions to the expert, the discussion of the appointment and holding of some types of judicial expertise, such as: technical examination of documents, research of prints and stamps in the technical examination of documents, expertise in the field of expertise, forensic evaluation and construction examination in commercial cases.

In addition, practical recommendations for solving the problems are provided. For example, the problem of the use of expertise in the field of intellectual property, namely where the boundary between the issues raised by the expert's decision and those that are legal and do not require the appointment of expertise and are resolved by qualified judges.

This article also analyzes the case law and clarifies the current legislation governing the institution of forensic expertise in Ukraine.

Analysis of basic research and publications. Problematic aspects of the application of the institute of forensic science in the analyzed category of disputes are insufficiently covered in the works of domestic scholars, but are of considerable interest to practitioners in the field of forensic science. The use of special knowledge is widely practiced to resolve disputes in the field of economic activity and to establish the facts or circumstances necessary for the case. V. Yu. Shepitko in his scientific works studies the problems of using special knowledge through the prism of modern criminal justice in Ukraine, explains such a concept as specific expertise and O. O. Eisman explores the conclusions of...
a forensic expert; their logical structure, meaning and scientific justification. Some elements of the procedural form of the Commercial Procedural Code of Ukraine and their improvement in the use of forensic examination, namely the issue of its appointment and conduct, are considered in the works of V. Belyanivych, M. Melnyk, H. Solomchak, V. Romaniv, A. Osetinsky, D. Pritiky, T. Varfolomeeva, V. Goncharenko, V. Boyarova, S. Goncharenko, V. Popelyushko and others.

The Article Purpose is to reveal the importance of forensic examination in the economic process, to clarify the concept of specific expertise; the problems of substantiation of the request for examination, analysis of judicial practice, as well as to cover problematic issues of appointment and conduct of certain types of examinations. seals and stamps in the technical examination of documents, etc.

Main Content Presentation. Forensic examination is an independent scientific field within a general theory has been developed and its place in the system of scientific knowledge has been determined. The process of introducing science and technology into production, consumption and everyday life inevitably affects such a specific area of human activity as litigation, as the trial is mainly a process of proof, which takes place on the basis of deeper insight into the essence of things. It is clear that since the evidence in the proceedings is aimed at establishing the facts of the past, information about which comes in the form of information that requires special identification, recording, research and interpretation, the establishment of these facts is virtually impossible without the use of natural and technical sciences.

Forensic examination significantly increases the reliability and probative value of the materials collected in the case, and the conclusions of experts, as a source of evidence, ensure the establishment of objective truth. Forensics is one of the unique ways to obtain valuable evidence, and its findings are an important source of evidence to help establish the truth in a case. This type of research significantly expands the cognitive capabilities of the court, allows you to use during the pre-trial and trial proceedings the whole arsenal of modern possibilities of science. In addition, the appointment and conduct of the examination is regulated in some detail by the current rules of the Commercial Procedural Code of Ukraine that is an important guarantee of compliance with the rights of the parties to commercial proceedings.

The Constitution of Ukraine stipulates that the principles of forensic examination are determined exclusively by the laws of Ukraine (paragraph 14 of Article 92). Legislation on forensic examination in commercial litigation

3 Ibid. p. 344
4 Конституція України URL: https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80Nn4537 (Date accessed: 26.06.2019).
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consists of the Law of Ukraine: On Judicial Examination of February 25, 1994 № 4038-XII (hereinafter referred to as Law of Ukraine: On Judicial Examination) its provisions apply to all types of courts that exist in Ukraine. The Law on Forensic Science defines the rights, duties and responsibilities of forensic experts, the procedure for their certification, issues of remuneration and social protection of forensic experts, as well as issues of international cooperation in the field of forensic science 1.

Besides, the system of normative legal acts on forensic examination in commercial litigation is the Commercial Procedural Code of Ukraine of 06.11.1991 in a new edition (hereinafter referred to as Commercial Procedural Code) 2, as well as bylaws and regulations: Instructions on the appointment and conduct of forensic examinations and expert research, approved by the order of the Ministry of Justice of Ukraine dated on 08.10.1998 № 53/5 (hereinafter referred to as Instruction) 3, Research guidelines concerning preparation and appointment of forensic examinations and researches 4, approved by the said order of the Ministry of Justice of Ukraine; Regulations on expert qualification commissions and attestation of forensic experts, approved by the order of the Ministry of Justice dated on 03.03.2015 № 301-5 5 and other regulations governing the legal, organizational and financial bases of forensic activities, the procedure for appointing forensic examinations, organization of examinations and registration of their results, rights, duties and responsibilities of forensic expert.

Given the current trends in the development of forensic science as a science and long debate in academia on the appointment of forensic science in the economic process, a single definition and specification of concepts used in this area, there is a need for terminological definition of the basic Law on Forensic Science3. Article 1 of the Law stipulates that “forensic examination is a study based on special knowledge in the field of science, technology, art, craft, etc., objects, phenomena and processes in order to provide an opinion on issues that

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3 Інструкція про призначення та проведення судових експертиз та експертних досліджень, затверджені наказом Міністерства юстиції України від 08.10.98 р. № 53/5. URL: https://zakon4.rada.gov.ua/laws/show/z0705–98 (Date accessed: 26.06.2019).
5 Положення про експертино-кваліфікаційні комісії та атестацію судових експертів, затверджені наказом Міністерства юстиції України від 03.03.2015 р. № 301–5. URL: https://zakon4.rada.gov.ua/laws/show/z0249–15 (Date accessed: 26.06.2019).
are or will be the subject of judicial review” 1. Thus, forensic examination should be understood as a study conducted by a forensic expert using special knowledge to perform the tasks of the parties to the process, the court and is important for the proper resolution of civil, commercial, administrative cases, administrative offenses and criminal investigations.

The academic explanatory dictionary of the Ukrainian language explains the interpretation of the word knowledge as: “awareness of something, the availability of information about someone or something, a set of information from any field acquired in the process of learning, research, cognition of reality in its individual manifestations and in general, science, with knowledge of the case skillfully, having experience in something” 2.

Article 69, paragraph 1 of the Commercial and Procedural Code of Ukraine stipulates that an expert may be a person who has the special knowledge necessary to clarify the relevant circumstances of the case. Thus, when conducting research by an expert, the term: specific expertise is used. There is no common understanding of the definition among scholars who have studied this question.

For example, V. D. Arsenyev defines that special knowledge is a system of information obtained as a result of scientific and practical activities in certain fields (medicine, accounting, automotive, etc.) and recorded in the scientific literature, manuals, guidelines, instructions 3. V. Yu. Shepitko, in turn, explains that special knowledge is a system of scientific data (information) or skills of an objective nature, obtained as a result of higher professional training, scientific activity, practical work experience, corresponding to the modern level 4. O. O. Eisman interprets the term as follows: special knowledge is knowledge that is not well-known, not publicly available, that does not have a mass distribution, it is knowledge that is possessed by a limited number of specialists 5.

In paragraph 10 of Article 1 of the draft Law of Ukraine: On forensic expert activities in Ukraine dated on 30. 03. 2017 № 6264 provides the following definition of specific expertise: “specific expertise is professional knowledge and skills possessed by specialists in a particular field of science, techniques,

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3 Е.г., Арсеньев В. Д. Использование специальных знаний при установлении фактических обстоятельств уголовного дела. Красноярск: Изд-во Красн. ун-та, 1986. 43 с.
4 Шепітько В. Ю. Проблеми використання спеціальних знань крізь призму сучасного кримінального судочинства в Україні. Судова експертиза. 2014. № 1. С. 11–18.
5 Эйсман А. А. Заключение эксперта (структура и научное обоснование). Москва: Юрид. лит., 1967. 152 с
arts, crafts, etc., obtained in the process of training and practical activities in a particular specialty (specialty) and necessary to address issues that arise in the process of pre-trial, legal proceedings, enforcement proceedings.

Based on the above, we can conclude that specific expertise is a set of information from any field, acquired in the process of training and practical experience, which has a limited number of specialists who are used to obtain the evidence needed to establish the truth in business pending trial. Thus, forensic examinations are appointed in cases when specific expertise is required to resolve issues in the case.

In accordance with paragraph 4 of the Information Letter of the Supreme Commercial Court of Ukraine: On some issues of appointment of forensic examinations from 27.11.2006 № 01-8/2651 on the appointment of forensic examination, a decision is made in addition to information provided by Article 100 of the Commercial and Procedural Code of Ukraine indicate: the circumstances of the case that are relevant to the forensic examination; grounds for appointment of forensic examination, in particular, additional or repeated; the organization or person entrusted with the forensic examination; a list of issues that need to be clarified; location of objects and documents to be investigated.

In practice, in the economic process, the following examinations are most often assigned: handwriting and vehicle merchandising, technical examination of documents, construction, technical, appraisal, construction, land, accounting and tax accounting, financial and economic activity, financial and credit operations, commodity operations (machinery, equipment, raw materials and consumer goods; auto-goods; transport-goods), expertise in the field of intellectual property (trademarks, industrial designs, wines di, utility model, trademark, trade names, etc.).

According to the provisions of the Commercial Procedural Code of Ukraine, the examination may be appointed on the initiative of the court or at the request of one of the parties to the case. As defined in Part 2 of Article 110 of the Commercial and Procedural Code of Ukraine, the appointment of an expert in the economic process is a way to provide evidence relevant to the case. At

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the same time, the decision of the Plenum of the Supreme Commercial Court of Ukraine: On some issues of the practice of forensic examination № 4 dated on March 23, 2012 states that forensic examination is appointed only when there is a real need for specific expertise to establish the facts when the expert's opinion cannot replace other means of proof.

While drawing up a request for the appointment of an examination, special attention should be paid to the justification of the need for examination. The justification for the appointment and conduct of the examination should indicate what circumstances or facts can be confirmed by the examination, because in practice the court often refuses to grant a request for an examination because of its inexpediency. For example, as stated in the decision of the North-Western Commercial Court of Appeal in case № 903/236/19 of 08.08.2019, “the panel of judges does not see that to clarify the circumstances relevant to the case № 903/236/18, specific expertise is required in the field other than law without it is impossible to establish the relevant circumstances and therefore refuses to grant the request for the appointment of forensic construction engineering.

While appointing forensic examination by a court, the expert or forensic science institution is elected by the parties by mutual consent, and if such an agreement is not reached within the period established by the court, the expert or expert institution is independently determined by the court. The Commercial Court entrusts forensic examination to state specialized institutions or directly to persons who meet the requirements established by the Law of Ukraine: On Judicial Examination and defined in Articles 7, 9, 10 of this Law. As a general rule, forensic examination can be entrusted only to those persons who are certified in accordance with the Law of Ukraine: On Judicial Examination and included in the State Register of Certified Forensic Experts, which is entrusted to the Ministry of Justice of Ukraine (Article 9 of the Law). A person conducting a forensic examination (hereinafter referred to as forensic expert) must not only have special knowledge, but also be a highly qualified specialist, an authority in a particular field of science, technology, art and craft.

The issues to be examined by the court shall be determined by the court. According to Part 5 of Article 99 of the Commercial and Procedural Code of Ukraine, the parties have the right to propose to the court issues, the explanation of which, in their opinion, requires an expert opinion. In case of rejection or

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change of the issues proposed by the parties to the case, the court is obliged to motivate such rejection or change. The questions posed to the expert and his conclusion from them may not go beyond the expert specific expertise. The correct wording of the issues submitted for examination is important when submitting a request for an examination.

The tasks performed by the examination and the indicative list of questions that are mainly asked by the expert during the appointment of forensic examination are established by the Scientific and Methodological Recommendation on the preparation and appointment of forensic examinations and expert research, approved by the Ministry of Justice of Ukraine № 53/5.

As for the expert conclusion, according to Article 98 of the Commercial and Procedural Code of Ukraine, it is a detailed description of the research conducted by the expert; the conclusions made as a result of them and the substantiated answers to the questions put to the expert, made in the order determined by the legislation. Also, the article explicitly states that the subject of expert conclusion cannot be issues of law.

While assessing the expert conclusion, the court must remember that it does not have a predetermined force and advantage over other sources of evidence for the court, is subject to verification and evaluation by the court internal conviction, which should be based on a comprehensive, complete and objective consideration of all circumstances in total. Therefore, cases when courts illegally consider expert opinions as sources of evidence that take precedence over other evidence, without proper examination and evaluation, or overestimate the probative value of probable conclusions, are erroneous practice, which the Supreme Court of Ukraine drew attention to, in particular in the Plenum ruling: On forensic examination in criminal and civil cases dated on 30.12.1997 № 8.

Therefore, the information provided in the expert conclusion has more guarantees of reliability, which can be explained by a number of objective factors: the procedural procedure for the appointment, holding and evaluation of the expert's opinion provided by law; statutory requirements for the identity of the expert; the lack of interest and objectivity of the expert; scientific nature of the information contained in the conclusion; reflection in the conclusion of the course of the study and formulation of conclusions; possibility of clarification of his/her opinion by an expert in court in cases of doubt in his/her correctness; possibility to check the results of the initial examination through the appointment of forensic re-examination, etc.

Let's consider the problematic aspects of the application/implementation of certain types of forensic examinations in commercial proceedings.

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1 Про судову експертизу в кримінальних і цивільних справах: постанова Пленуму Верховного Суду України від 30.05.1997 року № 8. URL: http://zakon0.rada.gov.ua/laws/show/v0008700–97 (Date accessed: 26.06.2019).
Recently, fraudsters are increasingly resorting to various tricks in order to prevent the research on fingerprints and stamps in the technical examination of documents. It solves two main groups of tasks: diagnostic (for example, setting the method of application (reproduction) of prints; method of making a printing plate (stamp) on its prints; time of printing, etc.) and identification (for example, establishing: whether prints are applied in several documents by one whether the imprints of the seal in the document are stamped, the provided samples, etc.) ¹.

It is important in the research to establish the method of making a seal (stamp), regardless of whether the study is provided directly with the printed form or its imprint in the document. Establishing a method of manufacturing a certified printed form contributes to the correctness of the assessment of features in solving further identification problems.

However, along with the development of the latest technologies for the manufacture of seals and stamps, the diagnosis of methods of their manufacture causes significant difficulties due to insufficient information and methodological support in this area of knowledge. Experience demonstrates that the greatest difficulties arise in the study of prints of seals (stamps) made by new technologies, because such prints often reveal only part of the set of features characteristic of a particular method of making a printing plate (stamp), which does not form a sufficient to conclude about one of the ways to make a cliché. Technologies such as laser rubber engraving, photopolymer, vulcanization and flash technology are now used to make seals ².

It should be noted that modern technologies allow for a small cost to make a large number of copies of seals (stamps) of high quality from one original while the copies reproduce the general and individual features of the original seal (stamp), which greatly complicates the identification of identification tasks. Under these conditions, the developed methodological sources for technical examination of imprints of seals and stamps are outdated and not suitable for solving identification and diagnostic issues regarding imprints of seals and stamps made using modern equipment.

Currently, significant problems also remain the lack of uniform rules for the manufacture of seals (stamps), their content and fonts, as well as the imperfection of the legal framework for regulating the production of seals and stamps.

In addition to these controversial issues, there are shortcomings of a practical nature: often when appointing examinations, the expert is provided with free samples of prints (stamps) which date is not specified on the documents

¹ Методика встановлення послідовності виконання штрихів, утворених електрофотографічним способом та пастами для кулькових ручок, за відсутністю ділянок їх взаємного перетину/Міністру Комунальної політики України, ХНДІСЕ. Київ, 2016.
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198 documents are not dated), or which raise objective doubts of experts on the date of prints. This makes it impossible to resolve the issue of establishing the time of imprinting the seal (stamp) in the document under study, and in some cases may lead to erroneous conclusions of the expert in resolving issues of identification. Also added are the facts of bringing to the decision of expert questions of a legal nature (for example, on the definition of forgery of documents or imprints of seals on them)

The above problems can be eliminated, firstly, by developing and providing experts with methodological recommendations for establishing a method of making cliché seals (stamps) by their prints in documents, which, in particular, should include a classification of the features stipulated by the method of making cliché seals and stamps according to new ones. technologies and mechanisms of imprinting; secondly, by improving the capacity of the interaction of expert units with judicial review bodies, the development and implementation of a set of administrative measures aimed at informing the latter of the quality requirements of the comparative study material and the list of issues that can be addressed in the during forensic researches.

While considering litigation on trademark rights to clarify the circumstances relevant to the case, there is a need to study and compare the properties of the disputed designations, which, in turn, requires the use of specific expertise, and therefore, involvement as one of the means of proof expert opinion, i.e. the use of expertise in the field of intellectual property. The obligatory circumstance, which is included in the subject of proof in cases of contestation of trademark rights due to non-compliance with the conditions of legal protection, is the establishment of its belonging to the designations covered by one of the grounds for refusal of legal protection on the date of application. An examination is ordered or ordered to clarify this circumstance.

The issue of determining the similarity of designations is so complex that they can be confused in trademark infringement or invalidation cases because of the similarity of a registered mark with various intellectual property objects (trademarks, trade names, geographical names, etc.) it is made for the decision of the examination of intellectual property objects, which are ordered by the parties or appointed by the court in trademark rights cases.

In cases of early termination of trademark rights, establishing the circumstance of conversion of the designation into common use, as the designation of goods and services of a certain type, after the date of application requires special knowledge, but the fact of non-use of the mark by its owner and good reasons for such non-use and electronic evidence. However, even in such cases, in order to establish whether the defendant used the mark for goods and

services in the form of a registered mark, as well as in a form that differs from the registered mark only in certain elements, if this does not change the mark as a whole, courts sometimes. Thus, in the process of considering the case № 910/20770/14 on the termination of the international registration for the sign “LR” (combined) to establish such a circumstance, the court appointed a forensic examination.

Since with the establishment of the High Court of Intellectual Property all cases in disputes over trademark rights are considered in commercial litigation (Part 4 of Article 3 of Commercial and Procedural Code of Ukraine), there are discussions about the future fate of forensic intellectual property after the establishment of the High Court on intellectual property issues, as some lawyers believe, most of the issues referred to the expert are bordering on legal and do not require the application of special knowledge, and therefore qualified judges will be able to establish the circumstances of the case without the appointment of an expert. This is especially true of examinations related to the study of trademarks, trade names and geographical indications.

Indeed, the peculiarity of the examination in the field of intellectual property, in particular trademarks, is that the basis of the methodological framework for the study of intellectual property is the regulations governing relations in the field of intellectual property. Thus, the properties and characteristics of trademarks, compliance with the criteria for acquiring legal protection, defined by the Civil Code of Ukraine, the Law of Ukraine: On Protection of Rights to Trademarks for Goods and Services and bylaws, including the Rules of preparation, submission and consideration of applications for a Ukrainian certificate for goods and services. For example, the question: “Does the mark for goods and services meet the conditions for the provision of legal protection?” is a matter of law and is decided by the court. However, the main task in resolving the question: “Is the mark such that it did not have a distinctive character on the date of application for the mark?” is to determine the properties of the mark for goods and services. Therefore, it does not belong to the issues of law, but to the competence of the expert. A positive answer to it is the basis for establishing the circumstances regarding the non-compliance of the mark with the conditions of granting legal protection.

Often examinations, in particular repeated ones, in cases concerning trademark rights are appointed without appropriate grounds and substantiation of the reasons for their appointment only at the request of one of the parties. For example, case № 5011-59/13633–2012 where the Supreme Commercial Court of Ukraine pointed out the lack of motives in the decisions of lower
courts for the appointment of forensic re-examination: “The conclusion of the commercial courts on the unfoundedness of the claims is based entirely on the conclusion of the re-commission forensic examination that is quite the opposite of the conclusion of the initial forensic examination on the same issues. At the same time, the court decisions do not specify what are the contradictions in the conclusion of the forensic examination and what violations in its preparation caused the court to doubt its correctness and became the basis for the appointment of a re-forensic examination. The court did not specify in the specified decision and what legislation could not be applied at preparation of the conclusion. The absence, in the opinion of the court, of an opinion on one of the issues is also not a ground for the appointment of a re-examination of all issues before the expert”\(^1\).

Forensic re-examination is also appointed in the presence of a significant violation of procedural rules governing the appointment and conduct of forensic examination\(^2\). The significance of such violations is determined based on the circumstances of a particular case and their impact on the correctness and validity of the expert's conclusions. Such violations may be an examination by a person subject to removal on the grounds provided for in Art. 35, 37 of the Commercial and Procedural Code of Ukraine. However, when the conclusion of the initial examination was not confirmed during the re-examination, it does not always indicate that the primary examination was incorrect and should not be taken into account by the court. Depending on the grounds on which the appointment of forensic re-examination is justified, there is a need or expediency to compare the results of primary and re-examination.

Thus, if the expert conclusion was found unfounded, the court rejects it, appoints a re-examination and in the further consideration of the case the conclusion of the initial examination cannot be taken into account at all. If the expert conclusion was found to contradict other materials of the case and forensic re-examination corresponds to them, the decision is made taking into account the conclusions of the forensic re-examination. However, the establishment of contradictions between the expert's opinion and other case materials also does not always indicate the inaccuracy of the conclusion. Contradictory evidence is subject to re-evaluation for its reliability and sufficiency. If the expert's opinion raises doubts about its correctness, even if there are discrepancies between the conclusions of the initial and forensic re-examinations, the court must evaluate each conclusion, compare them with each other and with other case files.

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\(^2\) Про судову експертизу в кримінальних і цивільних справах: постанова Пленуму Верховного Суду України від 30.05.1997 року № 8. URL: http://zakon0.rada.gov.ua/laws/show/v0008700–97 (Date accessed: 26.06.2019).
For example, in case № 922/2017/17 dated on 30.05.2018, the Supreme Court in the panel of judges of the Commercial Court of Cassation stated that, assessing the conclusion of the forensic examination in the field of intellectual property as appropriate and admissible evidence in the case, the courts of previous instances note that the forensic examination was performed by the same person who drew up the conclusion of the expert examination at the request of the plaintiff and who (the conclusion of the expert examination) was attached to the statement of claim to confirm the circumstances set out therein. These circumstances cast doubt on the correctness of the forensic examination\(^1\). However, such a ground does not indicate that in such circumstances the expert conclusion is unfounded or incorrect, and it may also be the basis of a court decision.

Therefore, not all of the grounds for re-examination indicate impossibility of taking into account the results of the initial examination, in particular, when the conclusions of the primary and forensic re-examination differ. And the worst case is the appointment of forensic re-examination without proper grounds and reasonable reasons for such an appointment.

**Conclusions.** Based on the above, it can be argued that forensic examination, in particular its appointment and conduct, plays an important role in the economic process in proving the circumstances of persons involved in the case, in order to substantiate their claims and objections. While initiating the appointment of a forensic examination, special attention should be paid to justifying the need for appropriate forensic examination, as well as the issues that will be asked to the expert. The expert's opinion is not final and binding, but is examined by the court together with other evidence in the case. We believe that the criterion for the truthfulness of the result obtained by the expert is the absence of facts or circumstances that would contradict the conclusion made by the expert or question it.

In our opinion, reducing the purpose of forensic examination to provide an opinion, the legislator reduces the research process in the framework of forensic examination to perform mechanical work. Research (which is essentially a forensic examination as a type of practical activity) is a cognitive activity which ultimate goal cannot be a conclusion: the purpose of any cognitive activity is to obtain information, factual data. Defining the scope of forensic competence “specific expertise in the field of science, technology, art, craft, etc.”, we believe that the legislator creates conditions of legal uncertainty of the legal act, violating the rule of law, laying the conditions for discretion. Such constructions of norms not only blur the boundaries of the subject of forensic examination (as a type of practical activity), but also complicate the achievement of the general goal of the Law: providing justice of Ukraine with independent, qualified and objective

\(^1\) Постанова Верховного Суду у складі колегії суддів Касаційного господарського суду від 30.05.18 року у справі № 922/2017/17. URL: http://reyestr.court.gov.ua/Review/74378115 (Date accessed: 26.06.2019).
examination focused on maximum use of science and technology. As for the legislator logic regarding the definition of objects of forensic examination as “research on objects, phenomena and processes” and not “material objects, phenomena and processes” (previous version of the Law), it needs a reasonable interpretation, as it contradicts the modern theoretical position of forensic expertise on the nature of the objects of forensic examination.

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ПРОБЛЕМНИ ПИТАННЯ ПРИЗНАЧЕННЯ ТА ПРОВЕДЕННЯ СУДОВОЇ ЕКСПЕРТИЗИ В ГОСПОДАРСЬКОМУ СУДОЧИНСТВІ

Стрімке зростання потреб сучасного суспільства у використанні знань з різноманітних галузей науки, техніки, мистецтва, ремесел не обходять такої суспільної сфери, як сфера судочинства, а розуміння значущості спеціальних знань для встановлення істини у господарській справі дає підстави розглядати судову експертизу як самостійний інститут захисту прав і законних інтересів громадян, юридичних осіб та інтересів держави загалом. В той же час спостерігається не лише неузгодженість положень окремих нормативно-правових актів між собою, але й протиріччя конституційним принципам, а в деяких випадках — законам науково-важкого розвитку певних галузей знань.

У зв'язку з цим нагальною є потреба в аналізі проблемних питань призначення та проведення судової експертизи у господарському судочинстві. Ключові слова: судова експертиза в господарському судочинстві. спеціальні знання, висновок експерта, дослідження відбитків печаток і штампів у технічній експертизі документів, експертиза у сфері інтелектуальної власності.

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ПРОБЛЕМНЫЕ ВОПРОСЫ НАЗНАЧЕНИЯ И ПРОВЕДЕНИЯ СУДЕБНОЙ ЭКСПЕРТИЗЫ В ХОЗЯЙСТВЕННОМ СУДОПРОИЗВОДСТВЕ

Одним из главных условий построения и функционирования правового государства является правовое регулирование всех сфер человеческой деятельности, создания надежного действенного правового механизма государственной защиты всех естественных и приобретенных прав людей, в соответствии с их правовым статусом. Стримительный рост потребностей современного общества в использовании знаний из различных областей науки, техники, искусства, ремесел не обходит такую общественную сферу, как сфера судопроизводства, а понимание значимости специальных знаний для установления истины в хозяйственном деле дает основания рассматривать судебную экспертизу как самостоятельный институт защиты прав и законных интересов граждан, юридических лиц и интересов государства в целом. В любой отрасли права существуют свои отраслевые институты. В тех случаях, когда определенный институт объединяет нормы двух или более отраслей права, он считается межотраслевым. Отдельный правовой институт представляет собой совокупность норм, регулирующих определенную группу правоотношений, которые оцениваются в силу своей специфики. Интеграция достижений различных наук в практику доказывания —
закономерное традиционно изучаемое явление для хозяйственного судопроизводства. Но постоянное развитие всех общественных процессов и отношений обусловливает динамические процессы в сфере их правового регулирования, которые отражаются в изменениях соответствующих нормативно-правовых актов. Вследствие интенсификации законотворческой деятельности в Украине, которая проявляется в последние годы, наблюдается не только несогласованность положений отдельных нормативно-правовых актов между собой, но и противоречие конституционным принципам, а в некоторых случаях — законам научного развития определенных отраслей знаний. К сожалению, подобные процессы присущи и такому важному государственному институту, как правосудие, и его отдельным институтам, в частности — судебно-экспертной деятельности.

В связи с приведенным выше появляется потребность в анализе проблемных вопросов назначения и проведения судебной экспертизы в хозяйственном судопроизводстве.

Ключевые слова: судебная экспертиза в хозяйственном судопроизводстве; специальные знания; заключение эксперта; исследования оттисков печатей и штампов в технической экспертизе документов; экспертиза в сфере интеллектуальной собственности.

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