



THE CONCEPT AND TYPES OF DISPUTE RESOLUTION IN THE FIELD OF INTELLECTUAL PROPERTY

Rakhmonova Mokhichehra Nodirbek kizi

Lecturer in the Intellectual Property Law Department at the

Tashkent State Law University

rakhmnva@gmail.com +998 97 003 23 33

Abstract

The present article is dedicated to the analysis of dispute resolution procedures in the field of intellectual property, the characteristics and positive aspects of alternative dispute resolution, arbitration and mediation. Separate attention is paid to recent case law, drafting of procedural acts and preparation of oral evidence, which includes practices and international acts in the field of intellectual property.

Keywords: ADR, mediation, arbitration, unfair competition, pretrial proceedings, counterfeiting, Board of Appeal, courts of general jurisdiction.

Introduction

In an increasingly globalized and evolving economy today, intellectual property has a huge impact on the development of business and production, as well as on our daily lives. Entrepreneurs and major industries have their own patented inventions, brands and also hold a number of rights to copyright objects, such as films, computer programme, music and artwork. In our daily lives, we come into direct contact with intellectual property when we download music, films or other information from the Internet, copy information from the library or make quotes.

It is worth noting that Uzbekistan is becoming an open market for large global companies and investors, when entering this market, expect stable and transparent guarantees and working conditions by obtaining due protection for their intangible assets, as investors can make investments not only by investing tangible funds, but also intellectual property rights, including copyrights, patents, trademarks, utility models, industrial designs, trade names and know-how, as well as business reputations(goodwill).

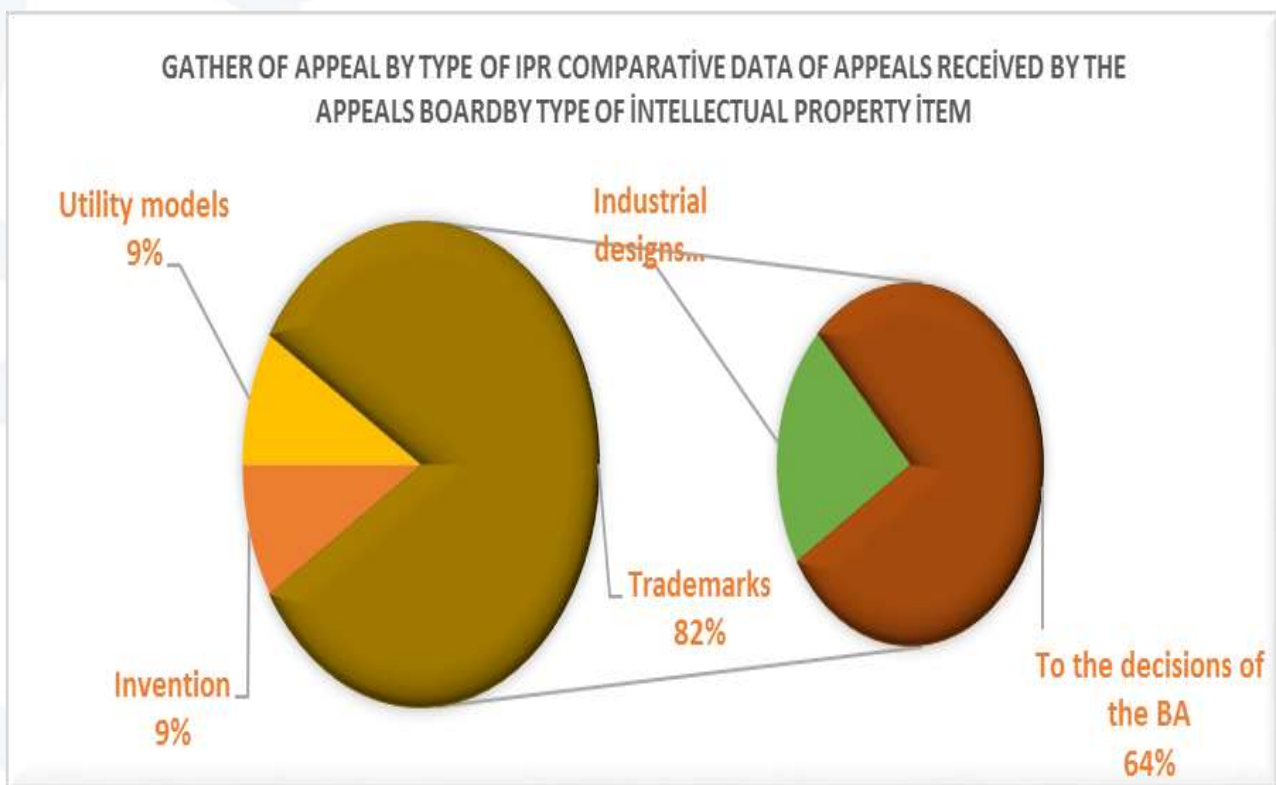
As the intellectual property, as we see it, is an integral part of today's civilised society and in the current context of ongoing reforms for development, liberalisation and stabilisation of the economy, there is an increasing need to ensure that intellectual property rights are protected in accordance with international standards.





This is implemented in accordance with intellectual property laws, such as patent, trademark and copyright legislation. Intellectual property laws are national laws and their impact is limited to the territory of the country in which the relevant laws are enacted. On the other hand, intellectual property is also subject to international law as it knows no national boundaries. This raises the question of how the rights of the owner of the intellectual property object should be protected in foreign countries. At the same time, states parties to conventions fulfil their obligations to protect each other's nationals through international conventions and agreements. The manner in which this is done is a complex and difficult system and its study is highly relevant to all actors in intellectual property law.

Protection of infringed intellectual property rights is directly implemented through a certain mechanism, which is established by the national legislation of each country. At present, measures have also been taken in our country to define a specific mechanism for the protection of intellectual property rights through the adoption of new legislative acts. The first example is the Decree of the President of the Republic of Uzbekistan "On measures to improve public administration in the field of intellectual property" № PP-4168 dated 08.02.2019, which identifies the main problems that exist in the field of intellectual property and the "Roadmap" to ensure



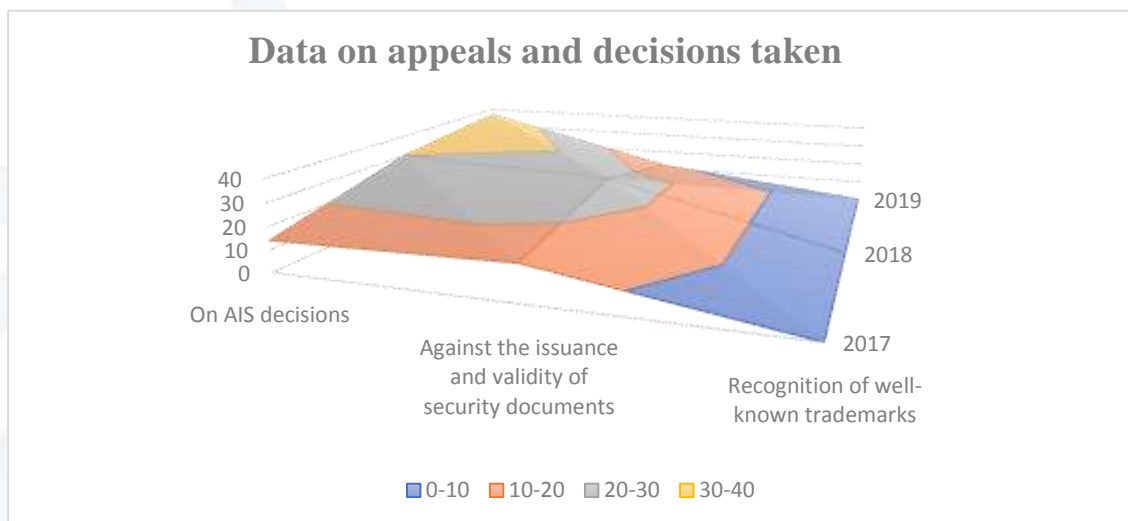


effective protection of intellectual property, which is attached to this Decree, provides for improvement of legislation in this area.[1] Thanks to this Decree a tendency is outlined This project is a significant breakthrough towards better judicial protection of intellectual property rights. Another example is the adoption of the Mediation Act, which came into force on 1 January 2019. According to this law, mediation is applicable to disputes arising from civil relations, which includes intellectual property law. A further breakthrough in this area was the adoption of the Law on International Commercial Arbitration, which was signed by the President on 16 February 2021.

Statistics from the Intellectual Property Agency under the Ministry of Justice from 2019 [2] show that the Appeals Board received 49 appeals in the reporting year. Legal protection of intellectual property appeals mainly concerned trademarks, representing 36 appeals or 73.5 per cent of the total number of appeals received.

The total number of appeals received in the reporting year was 75.5 % of the Agency's decisions resulting from the substantive examination of applications; 24.5 % of the appeals were against the protection granted.

As a consequence of appeals, 55.6% of the appeals examined were not satisfied, 11.1% were satisfied and 33.3% were partially satisfied. In 2019, appeals against the Agency's decisions resulted in 33.3% of the decisions being upheld, 8.9% were overturned and 35.6% were amended. As a result of appeals concerning legal protection already granted, the share of retained protection documents is 20%, invalidated - 2.2%.[2]



During 2019, there were 100 court proceedings in various jurisdictions relating to the legal protection of intellectual property. The Agency was involved as a third party without declaring independent claims in 70 lawsuits.



Statistics on participation of the Intellectual Property Agency in court hearings

Board of Appeal	Inventions	Trademarks	Selection achievements	Total
Defendant	-	30	-	30
Third party	5	64	1	70
Total	5	94	1	100

On the basis of the above statistics, we can conclude that as the number of disputes increases, each country's legal system needs a mechanism that consistently regulates the manner in which intellectual property disputes are resolved.

Dispute resolution scholars and lawyers do not currently have a clear and unified view on the very definition of the term "dispute resolution". For a better understanding of the term, a definition of the meaning of the word "dispute" is assumed, which in most cases is also used as a usage of the term "conflict".

Commonwealth of Independent States (CIS) scholars, based largely on jurisprudence, consider "dispute" to be one of the characteristic features of litigation, based on a conflict or conflict situation.

Intellectual property dispute resolution refers to a set of procedures or a process for resolving conflicts between parties that help to resolve disputes between parties, which include both citizens, companies and government organizations.

As defined by the American Bar Association (ABA), "dispute resolution" is a term that refers to the number of processes that can be used to resolve a conflict, dispute or claim [3].

The term "dispute resolution" is more commonly found in civil law contracts as one of the substantive terms where the parties establish procedures and methods of resolving conflicts that arise between them in the course of fulfilling obligations. Usually, the parties choose negotiation as a method of pre-trial settlement, and if a settlement is not reached, they prefer to take the dispute to the courts of law or, in rare cases, to arbitration courts (arbitration tribunals). As we know, disputes and conflicts can arise not only from contractual obligations, but also when an offence is discovered. In the latter case, in order to protect their rights, many civil society actors resort to judicial protection of their violated rights.



Notwithstanding the prevalence in our country of such forms of dispute resolution as negotiations, courts of general jurisdiction and arbitration, the concept itself is more extensive.

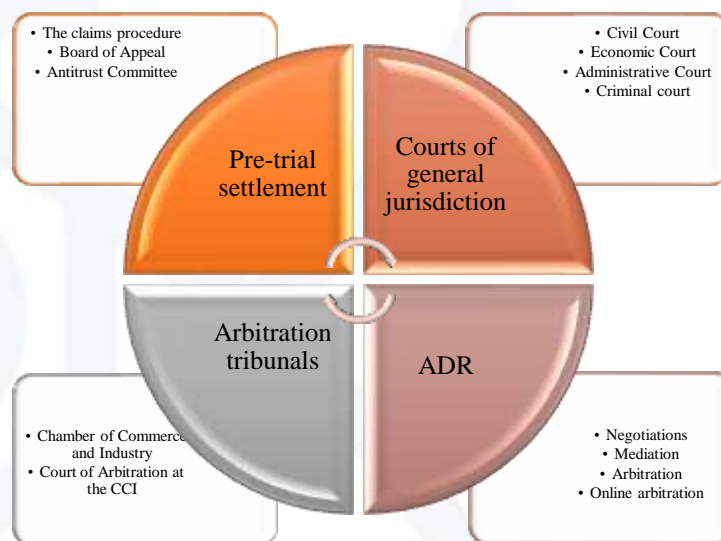
Foreign authors note that in addition to the above, there are various methods, ways or ways of dispute resolution and among their main forms they name the following:

1. proceedings in courts of general jurisdiction (state courts);
2. arbitral tribunals (arbitration);
3. alternative dispute resolution (ADR);
4. online dispute resolution.

In addition to the above, the American Bar Association also presents 22 forms (modes) of dispute resolution that are currently available. They are 1) Arbitration; 2) Case Evaluation; 3) Collaborative Law; 4) Cooperative Practice; 5) Divorce Coaching; 6) Early Neutral Evaluation; 7) Facilitation; 8) Family Group Conference; 9) Litigation; 10) Mediation; 11) Mini-Trial; 12) Multi-Door Program; 13) Negotiation; 14) Neutral Fact-Finding; 15) Ombudsmen; 16) Parenting Coordinator; 17) Pro Tem Trial (resolution of a dispute by a public judge, with the possibility for the parties to set a date of hearing and a judge rapporteur); 18) Private Judging 19) Settlement Conferences 20) Special Master 21) Summary Jury Trial 22) Unbundled Legal Services [6].

As we observe, our legislation does not provide for many of the aforementioned methods of dispute resolution, but it seems possible to use the first three main forms of dispute resolution, namely arbitration, state courts and alternative methods of dispute resolution.

Scheme No.1. Dispute resolution types in the field of intellectual property.





According to current legislation as well as law enforcement practice, the following main forms of dispute resolution in the field of intellectual property can be identified to date:

- 1) Pre-trial settlement of intellectual property disputes;
- 2) Courts of general jurisdiction (state);
- 3) Arbitration (arbitration courts);
- 4) Alternative ways of dispute resolution.

Pre-Trial Settlement

This type of dispute resolution is a set of procedures aimed at settling a dispute before going to court. In the event of a dispute or discovery of an infringement, it is possible to apply to the following public authorities competent in the field of intellectual property:

a) The Board of Appeal of the Ministry of Justice of the Republic of Uzbekistan. The Board is the authorised body carrying out pre-trial appeals relating to the legal protection of intellectual property. The Board of Appeals is composed of the chairman, his deputy, members of the Board and the secretary, and the Minister of Justice is the chairman of the Board of Appeals [7].

The Board consists of qualified employees of the Ministry and the Agency, independent scientists and specialists. The Intellectual Property Agency is the working body of the Appeals Board.

The persons filing an appeal or an application and the parties to the case shall be notified in writing by the Agency of the place, date and time of the meeting at least 10 days before the meeting. The Board shall, as a result of consideration of the appeal or application, take one of the decisions to grant, partially grant or deny the application.

Example. An application for invalidation of a trademark certificate which was registered contrary to the legislation in force in the Republic of Uzbekistan. According to the internal document of the Agency, such applications are considered within four months and a decision is taken whether to grant or refuse the invalidation of the certificate. In case of refusal on the part of the Appellate Council of the Agency, the right holder has one more way to restore his infringed rights by applying to the administrative courts of the Republic of Uzbekistan to invalidate the Agency's decision to register the trademark, which was registered in violation of the legislation in force.

б) The Antimonopoly Committee of the Republic of Uzbekistan (hereinafter referred to as the Committee). The Committee is the authorized body which is responsible for suppressing and detecting unfair competition. Article 13 of the Uzbek Law on Competition prohibits unfair competition. The Law considers





the following unlawful acts related to intellectual property to be unfair competition [8]:

1) Distribution of goods with illegal use of results of intellectual activity and similar means of individualization of a legal entity, means of individualization of goods, including distribution of goods with illegal use of designation identical to a trademark, trade name of an economic entity (competitor) or similar to confusion by its placement on goods, labels, packages or use otherwise in relation to goods sold or otherwise introduced into the civil market. It should be underlined that goods on the packaging and labels of which signs identical or confusingly similar to previously registered trademarks are used unlawfully and under the Uzbek Law on Trademarks shall be deemed counterfeit (the Trademark Law).

2) Misleading consumers about the nature, method and place of production, consumer properties of goods, their price and quality, manufacturer's (contractor's) warranty obligations; imitation of goods introduced into civil turnover by a business entity (competitor) by reproducing the external design of goods and their shape, name, marking, label, packaging, color scheme, trademark, copying advertising materials or other elements which individualize the goods of a business entity (competitor).

Example. Application to initiate an unfair competition case to the Antimonopoly Committee of the RUz (hereinafter - the Committee). Grounds for initiation and consideration of unfair competition law violation cases are materials of the antimonopoly authority's own inspections, statements of legal entities and individuals and submissions of the relevant state authorities. Once a case is initiated, the Committee considers it within one month and, if necessary, has the right to extend the period for another month. After deciding on the necessary measures to eliminate the offence, the Committee issues a prescription to the person against whom the decision has been taken, which is binding on all legal entities and individuals, as well as state bodies.

If this remedy is chosen, liability is imposed for failure to comply with the order of the Antimonopoly Agency in accordance with part 2 of Article 178 of the Code of Administrative Liability (CoAL) of the Republic of Uzbekistan. And in the case of a fourth violation, the offender is liable under Article 183 of the Penal Code (Penal Code of the Republic of Uzbekistan).

Pre-trial procedures are not compulsory, and the rights holder has the right to apply for the protection of his rights and interests directly to the judicial authorities, without resorting to the negotiation process, or to the Antimonopoly Agency.



Courts of General Jurisdiction (Public)

Pursuant to the current judicial system of Uzbekistan, courts can be divided into the following types: administrative, economic, civil and criminal courts.

Disputes in the field of intellectual property are considered by the courts depending on the jurisdiction and competence of the cases.

Civil Courts

Considers disputes relating to the violation of personal non-property and property rights to intellectual property, in particular the use without the consent of the author or right holder, breach of contract and other similar disputes that arise between natural persons or individual entrepreneurs, and also when disputes arise between legal entities and natural persons [9].

Example. The author may apply to the court in civil cases for the restoration of his infringed rights when his artistic work is posted by another person without his consent on the Internet and profits by selling it and putting it into civil circulation.

Economic Courts

Handles disputes relating mainly to infringement of property rights to intellectual property, in particular the use by business entities of trademarks without the consent of the right holder, who holds the relevant trademark registration certificate in Uzbekistan, or the illegal use of objects of patent law, such as inventions and utility models in industry without the permission of or licences from the right holders [10]. In addition to disputes arising from tort, the economic courts also hear disputes arising from contractual obligations of business entities (when licence agreements, complex entrepreneurial licence agreements and copyright agreements are concluded between them).

Example. A trademark owner who considers that his exclusive rights to a trademark have been infringed has the right to sue for the protection of his rights to restore the situation existing before the infringement and to stop acts infringing the right or creating a threat of infringement and compensation for damages when counterfeit products are produced by copying or imitating someone else's trademark known in the market.

The restoration of the situation prior to the infringement of the right shall include such actions as the removal of the trademark or similar mark from the product or its packaging, prohibiting its production and sale, stopping promotional campaigns, etc. If it is not possible to do so, the goods shall be destroyed.





Administrative Courts

Administrative courts consider complaints and applications by state bodies and agencies against decisions and actions taken by them in the field of intellectual property protection. For example, a person who has filed an application for a trademark, in case of refusal by the agency for intellectual property under the Ministry of Justice of the Republic of Uzbekistan and the Board of Appeal of the Ministry of Justice of the Republic of Uzbekistan, may appeal against the refusal to the administrative court [11].

Example. Appeal to court by the right holder to "invalidate the decision to register the trademark of the Intellectual Property Agency under the Ministry of Justice of the Republic of Uzbekistan", in cases where the trademark is registered contrary to the established norms of legislation and in violation of the rights of right holders.

Criminal Courts

Criminal courts deal with administrative offences and offences related to infringement of intellectual property rights [12].

Example: The owner of the performance's neighbouring rights may apply to a court for redress when a song is publicly performed without his or her consent.

Arbitration (at the Chamber of Commerce and Industry)

In arbitral tribunals, the parties have the opportunity to conduct the dispute process by choosing a sole arbitrator or a panel of arbitrators at their discretion. Under the Arbitration Courts Act, an "arbitration court" is defined as a "non-governmental body resolving disputes arising out of civil legal relations, including economic disputes arising between business entities". [13]

The Arbitration Court under the Chamber of Commerce and Industry of the Republic of Uzbekistan is currently acting as an arbitration court. The use of arbitration in intellectual property disputes is an effective mechanism for conflict resolution, which can ensure confidentiality, cost-effectiveness and speed of dispute resolution procedures. At the same time, arbitration allows parties to keep business partnership relations in spite of the arisen disagreements. The decision of the Court of Arbitration, in case of failure to execute them voluntarily, shall be enforced.

Alternative dispute resolution

Alternative dispute resolution ("ADR") refers to other means of resolving disputes that take place outside the courtroom. ADR usually includes early neutral assessment, negotiation, conciliation, mediation and arbitration.





As the number of lawsuits, court costs and continued postponements have increased, more and more states have turned to alternative ways of resolving disputes.

The two most common forms of ADR are arbitration and mediation (mediation), where in the first instance, negotiation is always preferred. This is the main method of dispute resolution. Negotiation allows the parties to meet and resolve disputes. The main advantage of this form is that it allows the parties to manage the process and the decision-making themselves.

Mediation is also an informal alternative to court proceedings. Mediators are people trained in negotiation who bring opposing parties together and try to work out an agreement or settlement that is accepted or rejected by both parties. Mediation is voluntary. In Uzbekistan, the procedure for resolving disputes through mediation is regulated in the Mediation Law.

Arbitration is more formal than mediation and is similar to a simplified version of court proceedings with a limited definition and simplified tested rules (e.g. an award). Before a dispute begins, the parties usually enter into a binding arbitration agreement or other form of agreement that allows them to determine the basic terms of that agreement or arbitration proceedings (number of arbitrators, arbitration centre, rules of arbitration, fees, etc.). The arbitral proceedings shall be administered by a sole arbitrator or by a panel of arbitrators agreed upon by the parties. It is worth noting that arbitrators do not necessarily have to be specialists in law; the parties may choose the arbitrators they consider best suited to resolve a particular dispute.

Example. Parties may choose a "patent attorney" to arbitrate an intellectual property dispute.

To constitute the arbitration, both parties agree on one arbitrator, or each party chooses one arbitrator and the third is chosen by the arbitrators themselves. Arbitration proceedings usually last from a few days to a week, with the panel sitting for only a few hours a day. At the end of the proceedings, an award is made in writing. Arbitration is already gaining popularity also in commercial disputes, including intellectual property disputes.





Scheme №2. Alternative ways of resolving intellectual property disputes.

Negotiations

a type of conciliation in which the parties resolve their dispute directly or with the assistance of their proxies, i.e. independently, without the involvement of an independent third party.

Mediation

a way of settling disputes with the assistance of a mediator, based on the voluntary consent of the parties, with a view to reaching a mutually acceptable solution.

Arbitration

This is a private process in which the parties to a dispute agree that one or more persons can make a decision on the dispute after receiving evidence and hearing arguments.

Thus, the study of the concept and types of dispute resolution in the field of intellectual property, in the author's opinion, is a priority for both beginners and modern lawyers who perform a variety of legal work: developing the terms of an agreement in the field of intellectual property (complex business license agreement, copyright agreement, licensing agreement, etc.), drawing up and accompanying the transaction, advising on the protection of rights to intellectual property objects, Lawyers' acceptance of other forms of dispute resolution, in particular, alternative ways of settlement and resolution of disputes in the field of intellectual property can change their perception of the forms and ways of protecting the rights of authors and right holders, as well as determine the vector for their further development.

It should be noted that presenting a complete picture will make it possible to understand the variability of existing forms of dispute resolution in the field of intellectual property, as well as to find ways to resolve current problems arising in intellectual property disputes.

Reference List

1. Lex.uz. - Национальная база данных законодательства 08.02.2019 г., № 07/19/4168/2594. Электронный источник доступен по следующей ссылке: <http://lex.uz/docs/4195431#4196484>
2. Годовой отчет от 2019 года Агентства по интеллектуальной собственности при Министерстве Республики
Узбекистан: https://ima.uz/upload/doc/%D0%B3%D0%BE%D0%B4%20%D0%BE%D1%82%D1%87%D0%B5%D1%82-2019_c.pdf





3. Годовой отчет от 2019 года Агентства по интеллектуальной собственности при Министерстве Республики Узбекистан:
https://ima.uz/upload/doc/%D0%B3%D0%BE%D0%B4%20%D0%BE%D1%82%D1%87%D0%B5%D1%82-2019_c.pdf
4. Dispute Resolution Processes // American Bar Association // http://www.americanbar.org/groups/dispute_resolution/resources/DisputeResolutionProcesses.html
5. Types of Dispute Resolution Processes// American Bar Association // http://www.americanbar.org/groups/dispute_resolution/resources/DisputeResolutionProcesses.html
6. Постановление кабинета министров республики Узбекистан об утверждении положения об апелляционном совете министерства юстиции республики Узбекистан ПКМ-856 от 09.10.2019 г.
7. Закон РУЗ «О конкуренции», ЗРУ-319 от 06.01.2012 г.
8. Гражданский процессуальный Кодекс Республики Узбекистан- <https://lex.uz/docs/3517334>
9. Экономический процессуальный кодекс Республики Узбекистан - <https://lex.uz/docs/3523895>
10. Кодекс Республики Узбекистан об административном судопроизводстве - <https://lex.uz/docs/3527365>
11. Уголовно-процессуальный Кодекс Республики Узбекистан - <https://lex.uz/docs/111463>
12. ЗРУ «О третейских судах» - <https://lex.uz/docs/1072094>
13. Рахмонова М. ПРОБЛЕМЫ ПРАВОПРИМЕНИТЕЛЬНОЙ ПРАКТИКИ ЗАЩИТЫ ПРАВ НА ТОВАРНЫЕ ЗНАКИ И ВОЗМОЖНЫЕ ПУТИ ИХ РАЗРЕШЕНИЯ //Review of law sciences. – 2020. – Т. 2. – №. Спецвыпуск.

