

9. Рішення КСУ від 14.07.2021 № 1-р/2021 у справі щодо відповідності Конституції України (конституційності) Закону України «Про забезпечення функціонування української мови як державної». *Офіційний вебпортал Верховної Ради України*. URL: <https://zakon.rada.gov.ua/go/v001p710-21> (дата звернення: 20.02.2026).

10. Окрема думка судді КСУ Колісника В. П. стосовно рішення КСУ щодо конституційності Закону України «Про забезпечення функціонування української мови як державної». *Офіційний вебпортал Верховної Ради України*. URL: <https://zakon.rada.gov.ua/laws/show/ne01d710-21#Text> (дата звернення: 20.02.2026).

DOI <https://doi.org/10.30525/978-9934-26-674-4-9>

## **NON-TRADITIONALITY IN RELATION TO MEANS OF INDIVIDUALIZATION: PROBLEMS OF THE CONCEPTUAL- CATEGORICAL APPARATUS IN THEORY AND PRACTICE**

**Zhuravlov V. D.**

*PhD candidate*

*State organization “V. Mamutov Institute of Economic and Legal Research  
of the National Academy of Sciences of Ukraine”  
Kyiv, Ukraine*

Intellectual property is one of the accompanying phenomena of innovation, economic development of any business, countries as a whole, as well as a qualitative characteristic of society in general.

The visible part of this dimension is the means of individualisation of participants of civil turnover, goods and services, which allow an individual or a company to distinguish and emphasise themselves in the market.

Such objects have long been protected both at the international level, primarily by the Paris Convention for the Protection of Industrial Property as of March 20, 1883 [1], and at the national level through codified and special regulations.

Means of individualisation are understood to be unique designations or combinations thereof that serve to identify and distinguish in the minds of consumers – entrepreneurs, companies, products, services or the origin of goods from a specific geographical location.

Trademarks, commercial names and geographical indications are traditionally included in this category.

At the same time, other objects can also be listed alongside, particularly: an individual's name or pseudonym, the name of a state or region, a domain name, as well as any signs used to label a business, a vehicle, or other ideological aspects of a business entity's existence.

This is what is meant in the doctrine when describing non-traditional means of individualisation, i.e. those that are not characteristic to a wide range of social relations, and whose legal status is either not regulated by law at all or is regulated in an extremely limited manner.

As Vita Moroz notes, "The introduction of the term "non-traditional means of individualisation" is conditional in nature and reflects a certain insufficiency of legal material necessary for the recognition of these objects as independent and traditional objects of intellectual property rights in Ukrainian civil law. Their legal regime differs from that of traditional objects protected by copyright, patent law and the law governing the legal status of traditional means of individualisation" [2].

However, in our opinion, the use of the term "non-traditional means of individualisation" sometimes seems controversial and superficial in relation to the essence of such objects from the point of view of the conceptual-categorical apparatus established in national legal doctrine.

For example, the trademark is a traditional object, the mean of individualisation, but at the same time, it is common and reasonable to use the term "non-traditional trademarks", which include colour, volume, smell, sound, etc. In addition, private labels, videos, animated and holographic images that integrate various elements are also considered as such.

According to Valentyna Kryzhna, "Non-traditional marks are marks for which it became possible to acquire trademark rights much later, and they have certain features compared to word and figurative marks" [3].

Meanwhile, as per Mykhailo Chemisov, "Non-traditional trademarks are, in essence, new unique types that do not fit into the existing legislative categories of traditional trademarks" [4].

It appears that if the subject of scientific research is the legal regime of non-traditional trademarks and, for example, domain names, from the point of view of modern doctrine, these objects can and should be combined under one collective definition – "non-traditional means of individualisation"; although in fact, by doing so, different legal categories are being mixed, each of which has certain distinctive features.

Similarly, this approach can be extended to a more general order – non-traditional intellectual property objects, which are understood to mean new plant varieties, integrated circuit topography, trade secrets, rationalization proposals, scientific discoveries, etc.

According to the definition given by Denys Nechoporenko and Petro Pererva, “Non-traditional results of intellectual activity are the results of creative or scientific and technical work that do not fall under the classic forms of intellectual property (patents, copyright, trademarks, etc.), but have a certain value and can be used in practical activities” [5].

At the same time, if we are talking, for example, about the aforementioned non-traditional trademarks, they are traditional objects of intellectual property, just like commercial designations.

The problem lies in that “non-traditional” has different meanings in these contexts, and although all three terms are used in a similar sense, they are not identical.

Non-traditional objects are those that do not fall under the classical order or have a hybrid legal nature and are difficult to classify; they are enshrined in codified and special regulations, and non-traditionality here is defined systematically, through a deviation from the common structure.

Non-traditional means of individualisation are an interdisciplinary term that covers designations which do not fully fit into canonical categories; they are provided for by law nominally, and in this case the focus shifts towards economic function.

In turn, non-traditional trademarks are the narrowest term and relate to only one institution; such objects do not have the usual visual and graphic form, but they are enshrined in special regulations, although the specifics of their protectability are not defined. Non-traditionality here is functional: it refers exclusively to an atypical configuration.

Therefore, when it comes to objects such as domain names and commercial designations, it is entirely appropriate to use the collective term “unconventional means of individualisation”, at least in inter-institutional studies; i.e., those that are not provided for as independent objects of intellectual property directly in the content of legal acts, in particular, the Paris Convention for the Protection of Industrial Property as of March 20, 1883, or are nominally enshrined but fall under the regulation of relevant documents.

It is also entirely reasonable to use the term “unnamed means of individualisation” in a similar approach to legal agreements whose name and essential terms are not provided for in the Ukrainian civil law.

### **Bibliography:**

1. Paris Convention for the Protection of Industrial Property as of March 20, 1883. URL: <https://www.wipo.int/wipolex/en/text/288514> (reference date: January 15, 2026).
2. Vita Moroz. The comparative analysis of terminological differences between “traditional means of individualization” and “non-traditional means

of individualization”. *Scientific journal of Kherson State University. Issue 5. Volume 1.2016.* URL: [http://nbuv.gov.ua/UJRN/Nvkhdu\\_jur\\_2016\\_5\(1\)\\_25](http://nbuv.gov.ua/UJRN/Nvkhdu_jur_2016_5(1)_25) (reference date: January 15, 2026).

3. Valentyna Kryzhna. Kinds of trademarks. *Theory and practice of intellectual property.* 1/2008. P. 44. URL: [http://www.ndiiv.org.ua/Files2/2008\\_1/4.PDF](http://www.ndiiv.org.ua/Files2/2008_1/4.PDF) (reference date: January 16, 2026).

4. Mykhailo Chemisov. The legal protection of non-traditional trademarks under the legislation of Ukraine. *Theory and practice of intellectual property.* 1/2025. P. 40. URL: <http://uran.inprojournal.org/article/view/324976> (reference date: January 16, 2026).

5. Denys Necheporenko, Petro Pererva. Peculiarities of protection of rights to non-traditional results of intellectual activity. *8th All-Ukrainian Scientific and Practical Conference “Creation, Protection, Defense, and Commercialization of Intellectual Property Rights Objects” (Kyiv, April 25, 2025): electronic collection. Igor Sikorsky Kyiv Polytechnic Institute.* URL: <http://cpdcipr.kpi.ua/article/download/326308/316142> (reference date: January 16, 2026).