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INTELLECTUAL PROPERTY RIGHTS IN POLAND

Intellectual property in Poland is governed by two principle legal acts: the Copyright Act and the Industrial Property Act. Intellectual property comprises copyrights and industrial property. IP is one of those areas where competitive advantage over other market players can be secured relatively easily. Registration of industrial property rights also provides significant tax benefits:

— industrial property rights, being intangible assets, can be subject to amortization, thus reducing the taxable profits;

— licensing can be the source of income, but it can also constitute an instrument of inter-company structuring of costs.

Poland has a long-standing tradition of protecting intellectual property rights, including copyrights and industrial property rights. The first normative acts regarding protection of copyrights and industrial property rights date back to the 1920s. The currently effective Act on Copyrights and Related Rights of 1994 and Industrial Property Law of 2000 are consistent with the international standards of protection of intellectual property arising from international treaties to which Poland is a signatory, in particular TRIPS.

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With these benefits it is surprising how relatively few companies use the IP rights in their business. The purpose of this paper is to provide a quick reference guide in respect of instruments of IP protection available in Poland in order to show various opportunities in that regard.

The Copyright Act relates to such acts of human creativity as literary activity, journalism, science, music, IT and many other. The Copyright Act, unlike the Industrial Property Act, does not provide for any registration requirements [1, 301]. However, the rules of licensing, transfer of rights, the permitted scope of use of copyrights and many other related issues are strictly regulated.

According to the Polish law industrial property can be protected by the following instruments:

— patents granted in respect of inventions;
— protection rights for utility models;
— registration right for industrial designs;
— protection right for trademarks;
— registration right for geographical indications;
— combating unfair competition.

Out of the above methods of protection of IP rights, the first four are the most popular ones and will focus on their presentation.

Patents are granted, regardless of the branch of technology, in respect of inventions which are new, involve an inventive step and are capable of industrial application. Invention is considered to be new if it does not form a part of the state of the art. The state of the art comprises everything that, prior to the date determining priority, was made available to the public by means of a written or oral description, by use, exhibition or disclosure in any other way [2, 471].

As a general rule, the protection of the invention begins at the moment of filing of the application with the Patent Office, however it is temporarily conditional upon the grant of the patent. The patent can be granted for a maximum of 20 years.

Utility model is a new and useful technical solution, concerning the shape or construction. Utility model is considered to be a useful solution if it allows to produce an effect having a practical meaning in the process of manufacture or use of products. The utility model is similar to the patent, however it has less stringent registration requirements and where no patent can be obtained the utility model registration often can be sought. The protection of the utility model generally begins at the moment of filing of the application with the Patent Office, however it is conditional upon the proper registration. The registration can be made for a maximum of 10 years.

The protection of industrial designs generally follows by the filing of the application and is conditional upon the successful registration, confirmed by the certificate of protection granted by the Patent Office [3, 339]. In Poland, the maximum duration of the protection is 25 years. It is worth of note that the procedure regarding industrial designs is relatively quick and registration can be obtained in 2-3 months.

Polish patent attorneys can register trademarks both in Poland and at the Office for Harmonization in the Internal Market (OHIM) in Alicante. In case of registration at OHIM, the trademarks are protected in all countries of the European Union [4, 23].

Before the filing of an application to ensure any given rights it is recommended to analyse all the means of protection that are potentially available. Depending on such factors as the market strategy for a given product, the desired time of protection or the budget available for the protection of IP, a comparison of available protection methods should be made in order to choose

the best option. It is very often the case that various IP rights' areas of application with regard to the same object may overlap. For example, it may be the case of a logo, which can be protected as an industrial design but can also be registered as a trademark. If the choice is made in favour of the former option, the protection can be granted for a maximum of 25 years, whereas a trademark can be registered for 10-year long periods, however without any maximum term limit. To take another example illustrating the importance of an appropriate analysis, let us imagine a table having an assembly system: usually it could be registered as a utility design, however its sheer design traits can be protected as an industrial design.

An infringement of IP occurs in the event of activities that interfere with the scope of exclusivity conferred by a given IP right. The most common examples of such breaches are an unauthorized imitation, falsification and counterfeiting of products and their designations, an unauthorized copying and performance of works, as well as the removal of original designations. The basic means of protection are afforded by the civil law, however under certain circumstances administrative and penal measures are also possible.

Speaking of the civil law protection of IP rights, the IP-holder has at its disposal a set of various claims. If the party in breach does not react to a warning letter, claims of both material (economic) and non-material nature are possible. The basic claim is to demand a stop to any infringements – this claim can be pursued before courts and is enforceable. What matters from the point of view of promptness of the action, in the case of IP infringements provisional measures can be ordered by the court, such as seizing the products sold in violation of IP rights and a ban on sales of such products imposed on the violator. Furthermore, an IP holder may claim damages and return of illegal profits.

The costs of obtaining registration rights in the area of IP can be divided into registration fees, translation (if necessary) and legal fees. The registration fees depend on the scope of protection sought. The translation costs are borne when a need arises. As far as the legal fees are concerned, they vary according to the country in which the patent attorneys are involved. Polish patent attorneys generally charge about 50-60% less as compared to the patent attorneys working in Western European countries, however Polish patent attorneys may act themselves only in respect of IP rights to be registered in Poland or at OHIM in Alicante (regarding community designs and community trademarks). In case of the need to register IP rights in a foreign jurisdiction (otherwise than through OHIM), the patent attorneys from that particular jurisdiction must be involved.

Literature

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ОПЛАТА ПРАЦІ: ОКРЕМІ ТЕОРЕТИКО-ПРИКЛАДНІ ПИТАННЯ

З переходом України до ринкових відносин поступово змінюється ставлення до питання належності до істотних умов трудового договору окремих умов про оплату праці. Передумовою забезпечення ефективності виконуваних процесів, що, у свою чергу, визначає конкурентоздатність підприємства, є зацікавленість як трудового колективу загалом і окремих його працівників у результатах його діяльності. Керівництво підприємства намагається зменшити витрати на оплату праці, при цьому забезпечити збереження якості й обсягу виробленої продукції. Працівники, у свою чергу, прагнуть отримати якомога більшу винагороду за свою працю, при цьому приклавши якомога менші зусилля. Основним мотиваційним фактором для забезпечення балансу між інтересами сторін трудового договору є система оплати праці. Вона повинна враховувати як індивідуальні здібності кожного працівника, так і його реальний внесок у виробництво певного продукту або надання послуги, а також продуктивність його праці.

Умови оплати праці найманих працівників визначаються на державному та договірному рівнях. Відповідно до Закону України «Про оплату праці» [1] суб’єктами організації оплати праці є: органи державної влади та місцевого самоврядування; роботодавці, організації роботодавців, об’єднання організацій роботодавців або їх представницькі органи; професійні спілки, об’єднання професійних спілок або їх представницькі органи; працівники.

Світовий досвід показує, що жодна країна з найрозвиненішою ринковою економікою не обходиться без втручання держави у процеси регулювання заробітної плати, хоч методи, сфера, масштаби державного впливу звичайно різні. Держава водночас виступає і в ролі власника, і в ролі захисника інтересів найманих працівників, і в ролі гаранта