

DESCRIPTION FOR THE GENERAL PUBLIC

The purpose of the project is a thorough analysis of the specific notion of the industrial property law – the notion of the prior user. The term “prior user” has been introduced in Polish legislation by the Act of 1924 on the protection of inventions, designs and trademarks. It is used in the industrial property law to describe a person who has exploited the invention in good faith, while that invention has been incorporated in the patent application filed with a patent office by other person in order to obtain a patent. In other words, this notion pertains to the situation in which a given solution has been independently developed by two different persons, where one of them applied for patent protection for that solution and the other one restricted itself to exploiting it within own entrepreneurship.

In such situation one of those persons obtains a patent, i.e. an exclusive right which confers upon the patent holder the right to request that any third party ceases to exploit the invention protected by this patent – theoretically, also said prior user who developed that invention independently and exploited it within own entrepreneurship, should be prevented from using the protected invention. However, depriving the prior user of the possibility to exploit the independently developed invention would be contrary to the principles of the social coexistence and the foundations of the patent protection system. Because of that, it has been established that the prior user should enjoy the right to continue to exploit the invention free of payment to the extent to which he had previously exploited the invention. Nevertheless, both domestic law as well as the foreign law is limited to very laconic legal provisions describing the situation of the prior user. As a result, in the legal doctrine and the jurisprudence several dissenting views have been expressed as regards the civil law nature of the prior user right, its formation as well as subsequent exploitation.

Elaboration on the legal position of the prior user which is the subject matter of this research project will comprise the thorough examination of the legal concepts and basic civil law issues relating to the formation of this right, the prerequisites of its formation as well as the exploitation of the prior user right. The notion of the prior user and the above-mentioned legal issues relating to its legal position pertain not only to the patent law, but also to the field of the trademarks and the industrial designs (both domestic and community rights), where the institution of the prior user is also applicable.

The realization of the project requires conducting a thorough research and analysis of the case law and the Polish legal doctrine. An examination and the analysis of case law and views of legal doctrine in some foreign jurisdictions will be also performed. Furthermore, new academic conclusions will be formulated on the basis of the analysis of the material, also on the basis of the comparative method, which comprises comparing solutions developed in foreign jurisdictions with the purpose of assessing their applicability when preparing specific conclusions with regard to the Polish law. The realization of the project requires conducting literature searches in specialised Polish and foreign academic institutions.

The results of the research will have a significant academic importance. The analysis will relate to numerous undecided and controversial issues located at the intersection of classic civil law and the industrial property law, which constitute the grounds for the prior user right. The project purports to provide thorough characteristics of this institution (which has not been so far a subject of a separate monographic elaboration), relating to the construction of the prior user right, the mode of its formation, the prerequisites thereof as well as the principles of its exploitation.

Taking into account the single, dissenting views expressed in the case law in this regard as well as only a few doctrinal publications, the results of the research should have an important value also for the judicial practice, as they may contribute to unification of the approach adopted in the relevant matter in case law. The entrepreneurs may also benefit from the results of the research project, since those results may contribute to providing more clarity and the certainty of legal relations. This is of particular importance in the context of potential introduction of so-called unitary effect of the patent protection, which may lead to significant increase of the number of patents being in force in Poland. These patents may constitute the source and the reason for the prior user rights within the meaning of the industrial property law, enjoyed by these entrepreneurs.

The results of the research will be made publicly available in the form of a legal monograph.