INTELLECTUAL PROPERTY IN SLOVAKIA IN THE LIGHT OF THE PRESENT LEGAL REGULATION DUŠEVNÉ VLASTNÍCTVO NA SLOVENSKU VO SVETLE PLATNEJ PRÁVNEJ ÚPRAVY*

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I. Introduction

Intellectual property law is one of the sub-branches of the substantive civil law and provides legal protection to a wide range of intangible assets representing results of creative intellectual activities of individuals. In view of the mentioned fact, the intellectual property law consists of a summary of legal standards governed in various legal regulations not only of national level, but also of the EU and international nature.

From the systematic perspective, the intellectual property law can be divided into two areas: the area of copyright and the area of industrial property rights. Copyright law, including both rights related to the copyright and rights connected with the copyright, is regulated by Act No. 618/2003 Coll. on copyright and rights related to copyright (Copyright Act).

Unlike copyright law, industrial property law provides legal protection to intangible assets of various natures, covering the area between creative technical inventions and trademarks. Therefore individual intangible assets are governed by special legal regulations. Hence, the industrial property law can be divided into two sub-areas: rights regarding the results of the intellectual creative activity (inventions, utility models, designs, topographies of semiconductor products,

new plant varieties) and rights regarding the designations (trademark, designation of origin of products, geographical designation of products and traditional speciality guaranteed).

The enumeration, however, cannot be regarded as exhaustive, since new intangible assets are constantly produced and created and they can be subsumed under none of the already legislatively regulated intangible assets and still have to wait for being legislatively embedded in the system of the intellectual property law (such as know-how, domain name, logo).

II. Material and Methods

The intellectual property law is made up by a summary of legal standards that provide legal protection to intangible assets. Even the name of the "intellectual property" itself indicates that the object of its legal protection covers specific assets, which are not of material nature that would allow to physically catch and hold the object of this property (*ius possidendi*).

The right to hold the property object is one of the three fundamental rights of its owner conferred on him/her by the Civil Code within the framework of the legal regulation of rights in rem. However, it regulates the property right only to

Abstract (EN)

The Civil Law of Slovakia includes more sub-branches of the private law, such as family law, obligation law, property law, law of succession and intellectual property law. The intellectual property law is regulated outside the Civil Code, in special codes and laws. The intellectual property law is one of them. The intellectual property law provides legal protection to various intangible assets which are the results of the creative intellectual activities of individuals. The paper analyses selected legal institutions of the intellectual property law and tries to systematise legal regulations related to the intellectual property on the national level, the level of the European Union as well as international level.

Keywords (EN)

intellectual property law, legal regulations, intangible assets, patents, inventions

Abstrakt (SK)

Občianske právo pozostáva z viacerých pododvetví súkromného práva, kam patrí rodinné právo, záväzkové právo, vecné právo, dedičské právo a aj právo duševného vlastníctva. Právo duševného vlastníctva je upravené v osobitných právnych predpisoch mimo Občianskeho zákonníka. Právo duševného vlastníctva poskytuje právnu ochranu rôznym nehmotným statkom, ktoré sú výsledkom tvorivej duševnej činnosti človeka. Článok analyzuje vybrané právne inštitúty duševného vlastníctva a pokúša sa zosystematizovať právnu úpravu týkajúcu sa duševného vlastníctva na národnej, úniijnej aj medzinárodnej úrovni.

Kľúčové slová (SK)

právo duševného vlastníctva, právne predpisy, nehmotný majetok, patenty, vynálezy

* The paper has been published in the Volume Proceeding: „Výzvy a perspektívy Agrárneho práva EÚ“ Jean Monnet Chair [CD]. Nitra: Slovak University of Agriculture in Nitra, p. 203. ISBN 978-80-552-1200-5.

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tangible assets, objects, and therefore, the provisions of the Civil Code can be used in relation to the intellectual property only in the alternative. That is the reason why both the intellectual property objects require special legal regulation in special laws and the intellectual property was excluded as a separate sub-branch of the Civil Law.

This article focuses on the analysis of legal relations in the field of intellectual property and, in particular, demonstrates the legislation system in the field of intellectual property on the example of the patent law. The article takes into account not only the international legal standards, legal standards of the European Union and of the Slovak Republic, but also professional publications in the given field and works available on the Internet.

III. Results and Discussion

1 Intangible Assets as Objects of Legal Regulation of Intellectual Property

Intangible assets are assets that do not have any material (physical) form, which would enable them to be held, used (enjoyed) and managed in the same way as tangible assets can be. There is a variety of intangible assets; however, not every one of them may become an intellectual property law object (e.g. honor, health, short story, computer program, biotechnologies, a new plant varieties). Even the abovementioned enumeration indicates the difference in the nature of tangible and intangible assets, which implies the need for different kind of treatment, as well as the need for different kind of legal protection. While the computer program is an intangible asset, which can be freely traded; the honor and human health deserve legal protection, which, however, cannot allow these intangible assets to act as objects of trade relations between natural or legal persons. It follows that objects, which are provided legal protection by the intellectual property law, can be represented only by intangible assets fulfilling the following criteria:

- they represent a result of creative activities of human beings having the right to decide on the future use of the result of their creative activities, whether it will be used by themselves or it will be allowed to be used by other persons as well,
- therefore the intangible assets must be expressed in such a form that would enable other persons to perceive it with their senses as well;
- they are able to satisfy certain human needs (e.g. of aesthetic, economic or social nature), which creates the demand for them, and based on the market supply and demand, their price expressing their asset value is set;
- therefore, they must have a certain asset value, i.e. a value that may be expressed in terms of money;
- on the basis of that, they are or may stand for objects of legal obligations against consideration or free of charge between the subjects (for example, they can stand for objects of license agreements, agreements on transfer of

rights to objects, agreements on establishment of lien, etc.).

Intangible assets differ from tangible ones mainly by the fact that they have no material form and hence they are not bound to a place or a specific time. Their intangible form allows them to be used anywhere in the world, even at the same time. It is so-called ubiquity potential of intangible assets. This fact is important in particular in relation to the provision of an adequate legal protection of rights of intellectual property owners against misuse by third persons not having the right to use the given object.

1.1 Subject of Legal Relations in Intellectual Property

There is a specific characteristic of the intellectual property law and it is the fact that objects of the intellectual property can be created only by a human being, natural person, who is capable of a creative intellectual activity. Despite of the fact that legal entities (companies, civil associations, foundations, etc.) are not capable of creative activities, certain property rights related to the intellectual property objects are conferred on them. The capacity to have rights and obligations and the legal capacity are conferred on them by the law at the moment of their establishment without any limitation and they last until their termination. The establishment and termination of legal entities are, as a rule, in connection with the registration in the relevant register and the subsequent erasure from the registry. The reason why certain intellectual property rights are conferred on these subjects by the law is the fact that though the subjects are not capable of creation of any intangible assets by themselves, it is usually them, who are involved in the preparation of an adequate creative and working place for the natural persons in a substantial way. In other words, many inventions, designs, copyright works, or plant varieties would not have been created if the legal entities had not provided the material, technical and financial resources necessary for the creative work.

And therefore two different types of subjects in the intellectual property law are recognized: original subject, who is the creator (originator) of the intellectual property objects and only a natural person can stand for such subject, and derived subject, who derives his/her rights to the object of intellectual property from the creator.

1.2 Object of Legal Relations in Intellectual Property

Objects of legal relations are items, rights or other asset values. An item is every tangible object other than human being and manageable natural component (legal definition by the Civil Code, 1950). Since these are tangible articles, intellectual property law objects represented only by the intangible assets cannot be included in this category. Rights can stand for a subject matter of legal relations only if their nature allows it, i.e. in most common cases, it will be a claim – right of a creditor to demand performance from a debtor. The other assets represent everything that can stand for the object of the le-

gal relations, but cannot be subsumed under the concept of the item or the right. This category comprises the intellectual property objects (inventions, trademarks, copyright works etc.). Individual legal regulations regarding the intellectual property objects contain legal definitions and legal terms, which must be fulfilled by the intangible assets in order for them to be recognized as specific objects of intellectual property (e.g. designs must be new and of particular nature).

Intangible assets representing intellectual property objects must be expressed in the form perceivable by human senses. The form can be either ephemeral (e.g. a recitation of an artwork), or permanent, captured on a tangible medium (e.g. a description of an invention, formation of a technology, the part of which is an invention, scientific work captured in a book or a CD). In particular, in the latter case, if the intangible asset is captured in a tangible medium, it is necessary to distinguish the ownership of the physical substrate (book) containing the intangible asset (scientific work) from the ownership of the intangible asset representing the object of intellectual property rights. The person who acquires the book, for example through a purchase or donation, becomes the owner of the book, but is not authorized to manage the intangible asset – the scientific work, which is embodied in the book, the person, for instance, cannot make copies of the book and sell or lend them.

1.3 Content of Legal Relations in Intellectual Property

The content of the legal relations is represented by the rights and obligations of the subject of legal relations. While only property rights are taken into account in the case of material property (property to tangible assets), we distinguish between personal (or personal and mixed) and property rights in the case of intellectual property.

Property rights enable persons to make use of the asset value of the intellectual property law objects, for instance to transfer, lend or give consent to a temporary use of an intellectual property object against consideration or free of charge, but, in particular, to use intellectual property objects on their own and to demand protection for their intellectual property objects as well. It corresponds to the triad of the rights to tangible assets in the field of material property regulated in the Civil Code, which allows the owner to keep – to use and to enjoy – to manage the given item. However, the right to keep the objects cannot be transferred to the intellectual property law literally, as the intangible assets can be neither physically caught nor protected against third parties' unauthorized intervention. Therefore, the owners of the intangible assets, which come under the intellectual property, are conceded certain protection period, during which no one other than the owner of the intangible asset, or the person entitled by the law or by the owner of the intangible asset cannot use and manage the protected object of the intellectual property. The protection period varies depending on the type of the intellectual property object (for instance in case of inventions, it is 20 years; in case of designs, it is a maximum of 25 years; in case of utility models, it is a maximum of 10 years only). This temporary monopoly right protects the

owner of the intangible asset against the unauthorized use of the asset by a third party, which the owner of the asset is not able to prevent by using protection that he/she can apply in relation to the material items (e.g. that of security in a locked area, security box at a bank).

The second authorization from the property rights triad – to use and enjoy the item – can be applied in relation to the intangible assets as well. However, certain differences can also be seen between the tangible and intangible assets even in this case. The use of tangible assets can lead to them being destroyed, consumed, damaged or worn out physically. Intangible assets can be worn out only morally, even in the case when they are captured in a tangible substrate, for example a book with a scientific work can be destroyed, damaged, lost, but the scientific work preserves and exists even after that.

The third authorization – to manage the item – means that the owner of the item has the right to alienate (to sell, to donate, to exchange), lend, lease or otherwise manage the item. The objects of intellectual property act as objects of contractual relations, in the most common case, those of license agreements. Transfer of intellectual property rights to another object is limited, e.g., in terms of copyright law, it cannot be applied under any circumstances according to the current legislation; in the case of industrial property rights, only the property rights can be transferred to another object, the personal rights remain and cannot act as a subject matter of any agreement on transfer of intellectual property rights (e.g., right to origin of invention). Therefore, the property rights to the industrial property objects are transferable; moreover, they can act as a subject matter of a succession, execution, or a subject matter of security instruments, such as lien. However, it is important to understand that these property rights are limited in time. The protection period differs depending on what the subject matter of the industrial law is, for instance, a patent protection lasts for 20 years, a trademark protection lasts for 10 years with repeated possibility of prolongation for further ten years.

Individual or personal rights are typical only in relation to the intellectual property objects. They include, for example, the right to authorship, right to origin, right to decide on publication of work or invention, or the right to integrity of intellectual property object. In terms of industrial property law, personal rights are conferred only on the creator of the given intangible asset. Personal rights cannot be transferred to another person during the life of the creator and are not transferred to his/her heirs even after his/her death. They are not limited in time, i.e. do not terminate at the time of the creator's death. However, personal rights represent an important part of the content of legal relations only in relation to the results of intellectual creative activities (inventions, designs, new plant varieties, etc.). In the field of industrial rights to designation, the emphasis is on property rights and personal rights are usually insignificant (e.g. it is not important who created a given trademark, but who uses it and what goods and services are designated with it).

In terms of industrial property law, the third group of rights is distinguished as well and it represents the content of legal relations. These are so-called mixed rights, which

are personal in nature, however, unlike personal rights, they can be applied in the context of their transfer to another person, or their transfer through the death of an originator to a heir. It includes, for example, the right to register the object for legal protection, right of priority of earlier application for legal protection and the right to grant of protection, if the intangible asset fulfills the conditions specified by the law.

2 Intellectual Property Law System

The intellectual property law can be divided into two separate fundamental areas. The first one is the copyright law, which is further divided into:

1. copyright in the stricter sense,
2. right of performers (right related to the copyright),
3. right of producers of audio and audio-visual recordings and right of broadcasters (rights related to copyright).

The second area covers industrial rights, which can be divided into:

1. industrial rights to the results of intellectual creative activity including:
 - a) inventions,
 - b) utility models,
 - c) designs,
 - d) topographies of semiconductor products,
 - e) new plant varieties,
2. industrial property rights to marking including:
 - a) trademarks,
 - b) designation of origin of product,
 - c) geographical indication of product,
 - d) business name,
 - e) traditional speciality guaranteed.

There are also other intangible assets that have not gained any legislative form yet (e.g. know-how, domain names, logos). It can be expected that the development of science and technology will provide new intangible goods that we will not be able to classify into the already existing system of the intellectual property law. Therefore, the abovementioned intellectual property law system is definitely closed, but remains open to potential new intangible goods. Moreover, scientific debates are currently taking place and discussing whether it is appropriate to protect computer programs as a work in accordance with the copyright or it is necessary to choose their patent protection. It is not excluded that the result of the debates could be an absolutely new legal regulation in terms of the protection of computer programs.

3 Substantive Patent Law

Patent law (law on inventions) consists of a summary of legal standards governing the legal relations arising in connection with the creation, legal protection and application of inventions that act as a subject matter of patent applications or patents. The basic legal regulations in the field of patent law are:

- Act No. 435/2001 Coll. on patents, supplementary protection certificates and on amendment of some acts (Patent Act),
- Decree of the Industrial Property Office of the SR No. 223/2002 Coll., implementing Act No. 435/2001 Coll. on patents, supplementary protection certificates and on amendment of some acts (Patent Act),
- Act No. 344/2004 Coll. on patent attorneys, on amendment of Act No. 444/2002 Coll. on designs and Act No. 55/1997 Coll. on trademarks, as amended by Act No. 577/2001 Coll. and Act No. 14/2004 Coll.,
- Act No. 495/2008 Coll. on maintenance fee for a patent, for a European patent with the designation of the Slovak Republic, for a supplementary protection certificate for medicinal products and for plant protection products and on amendment of some laws.

The issue of intellectual property is discussed at the international level as well; the most important international agreements relating to patent law include:

- Paris Convention for the Protection of Industrial Property (Decree No. 64/1975 Coll.),
- Convention Establishing the World Intellectual Property Organization (Decree No. 69/1975 Coll.),
- Patent Cooperation Treaty (Communication of the FMFA No. 296/1991 Coll.),
- The Strasbourg Agreement Concerning the International Patent Classification (Decree No. 110/1978 Coll.),
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (Decree No. 212/1989 Coll.),
- Patent Law Treaty, Implementing Regulations to the Patent Law Treaty and Agreed Statements by the Diplomatic Conference and adopted by the diplomatic Conference on June 1, 2000 (Communication of the Ministry of Foreign Affairs of the Slovak Republic No. 99/2005 Coll.),
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (Communication of the Ministry of Foreign Affairs of the Slovak Republic No. 152/2000 Coll.),
- Convention on the Grant of European Patents (European Patent Convention) (Communication of the Ministry of Foreign Affairs of the Slovak Republic No. 47/2008 Coll.),
- Implementing Regulations to the Convention on the Grant of European Patents (European Patent Convention) (Communication of the Ministry of Foreign Affairs of the Slovak Republic No. 590/2007 Coll.),
- Rules relating to Fees of the Convention on the Grant of European Patents (European Patent Convention) (Communication of the Ministry of Foreign Affairs of the Slovak Republic No. 575/2007 Coll.),
- Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense, for Which an Application for Patents Have Been Made (Communication of the Ministry of Foreign Affairs of the Slovak Republic No. 599/2004 Coll.).

The legal regulation of patent law is closely connected with the EU internal market and affects trade within the internal

market of the Union, thus the law of the European Union pays attention to the issue as well. It comprises mainly the following EU legislation:

- Regulation of the European Parliament and of the Council (EU) No. 1257/2012 of 17 December 2012 implementing enhanced cooperation in the area of creation of unitary patent protection,
- Council Regulation (EU) No. 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of creation of unitary patent protection with regard to the applicable translation arrangements,
- Agreement on a Unified Patent Court (2013/C175/01),
- Regulation of the European Parliament and of the Council (EC) No. 469/2009 of 6 May 2009 concerning the supplementary protection certificate for medicinal products,
- Regulation (EC) No. 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products,
- Directive No. 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions,
- Regulation of the European Parliament and of the Council (EC) No. 816/2006 of 17 May 2006 on the compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems,
- Regulation of the European Parliament and of the Council (EC) No. 1901/2006 of 12 December 2006 on medicinal products for paediatric use and amending Regulation (EEC) No. 1768/92, Directive 2001/20/EC, Directive 2001/83/EC and Regulation (EC) No. 726/2004.

3.1 Invention versus Patent

In terms of the industrial property law, it is necessary to distinguish between the terms of invention and patent. The difference between these terms is significant. A patent is a public document issued by the Industrial Property Office of the SR (hereinafter referred to as the IPO SR), which grants the property right of the owner of the patent who is the only subject authorized to make use of the patent technical solutions, or to give consent for its use by a third person. An invention is a technical solution fulfilling the criteria specified by law in order to be granted legal protection in the form of patent certificate. Therefore the patent provides the legal protection to the technical solution (the invention).

According to the provisions § 5 of Patent Act, patents are granted for inventions coming under any field of technology, which are new, involve inventor's activity and are industrially applicable. However, there are intangible assets that may fulfil the criteria for patentability, but are excluded from patentability for various reasons. Their exhaustive enumeration is included in the provision § 6 par. 1 of Patent Act. Patents shall not be granted for:

- a) plant varieties and animal breeds,
- b) biological methods of production of plants and animals,

- c) methods of treatment of the human or animal bodies by surgery or therapy, diagnostic methods or methods of disease prevention practiced on human or animal bodies. This provision shall not apply to products, in particular to substances or mixtures that are usable in any of the abovementioned methods of treatment, diagnosis or disease prevention,
- d) inventions relating to the human body at various stages of its formation and development, or relating to the discovery of some of the elements of the human body only, including the sequence or partial sequence of a gene,
- e) inventions, the commercial use of which would be contrary to either public policy or accepted principles of morality.

Patent Act, however, does not exclude any biotechnological material or biotechnological procedures from the patentability; on the other hand, it explicitly specifies that patents are granted for the following biotechnological inventions (§ 5 par. 5 of Patent Act).

An invention is a technical solution resulting from an intellectual creative activity of a human being fulfilling four criteria laid down by Patent Act:

- area of technology,
- novelty,
- inventive activity,
- industrial utility.

The area of technology is not explicitly defined, the law only states that it is possible to grant patents for inventions in every area of technology. The invention can be not only a result of a production method or process, but also the production process itself, or a part of the production process. However, Patent Act excludes some intangible assets from patentability by means of enumeration, because it does not consider them to be inventions. Pursuant to the provision § 5 par. 3, the following items cannot be considered to be inventions:

- discoveries, scientific theories and mathematical methods;
- aesthetic creations;
- plans, rules and methods for performance of intellectual activities, games, trade activities;
- computer programs;
- presentation of information.

The second basic criterion for the grant of the patent is novelty. According to Patent Act, an invention is new if it does not form a part of the state of the art. Pursuant to § 7 par. 2, the state of the art is considered to comprise everything made available to the public by any means anywhere in the world before the date from which the applicant has the right of priority. The abovementioned means that the novelty of inventions is examined at the date of the filing of the patent application. However, there is also an exception set by Patent Act (§ 7 par. 4) and it is the fact that the state of the art is not considered to include such a way of making the invention available to the public, which occurs less than six months prior to the filing of the application and which results from an apparent misuse in relation to the applicant

or results from the invention having been displayed by the applicant at an official exhibition in compliance with international treaties.

The third criterion is represented by the inventive activity. Pursuant to § 8 of Patent Act, an inventive activity can be talked about only if an expert does not consider it as deriving from the state of the art in an obvious manner. These are two key concepts – “expert” and “deriving from the state of the art in an obvious manner”. For the purpose of this provision, the expert is meant to be an average qualified professional in the given technical area. It is necessary to perceive the phrase of “deriving from the state of the art in an obvious manner” as everything that does not require the expert to possess extraordinary abilities in the given technical area.

The last fourth criterion is represented by the industrial utility. According to the prov. § 9 of Patent Act, an invention is recognized as industrially usable, if its subject matter can be produced or used in any sector, in particular in the field of industry and agriculture.

3.2 Creator versus Owner of the Invention

In the same way as we distinguish between the invention and the patent, it is also necessary to distinguish the subjects of the patent legal relations, namely the terms of a creator and an owner of an invention. A creator is a natural person, who created an invention by means of his/her own creative intellectual activities. An owner of an invention is a person who files a patent application, on the basis of which the patent is granted for the invention. The owner of the patent may be not only the originator himself/herself but also another person if the originator has transferred his/her rights to the invention to another person. An exception is represented by an industrial invention, i.e. an invention created by an employee in a labour law relation or a relation similar to it.

In case of the originator creating the invention while in employment, the right to the invention belongs to the employer unless otherwise agreed by the employee (inventor) and the employer. However, the right to origin remains with the employee – creator. According to the law, the employer has three-month period, until the end of which he/she must claim the right to the invention. This period begins from the delivery of a written notification, through which the employee informs his/her employer about the creation of a solution, which could become the invention. If the employee fails to do so, he/she is threatened with sanctions in accordance with Patent Act (compensation for damages, including lost profits, adequate satisfaction, elimination of consequences of the procedure). Patent Act confers the right to the invention on the employer and it does so from the moment when he/she makes a written declaration for the employee (the originator) stating that he/she claims his/her right to the invention. If the employer fails to make the written declaration, through which the right to the invention would be claimed, during the three-month period, the right to the invention passes back to the employee.

The originator of the invention is legally entitled to the remuneration for the invention vis-à-vis the employer. The

amount of remuneration depends on the technical and economic importance of the invention and the contribution, which is achieved with its use. While the material share of the employer in creating the invention and the contents of work tasks of the originator is taken into account. The right to an adequate remuneration arises from the moment of application of the employer's right to the invention.

There may be more than one owner of the patent for the invention and in this case, we talk about the divided co-ownership, to which the subsidiary provisions of the Civil Code apply, i.e., unless otherwise provides for by Patent Act. Every co-owner has the right to use the invention himself/herself on his/her own account. However, no one of them can give consent for the use of the patent by a third person without the consent of its other co-owners, unless the owners of the patent agree otherwise. In the case of the absence of such an agreement, the consent of every co-owner is necessary for the conclusion of the license agreement. Similarly, the transfer of the patent requires the consent of all co-owners as well. However, if it is only the transfer of a share to the patent, the co-owner of the patent may transfer his/her share to a third person only after the application of the right of pre-emption of the other co-owners. It does not apply if the acquirer is a person close to him/her.

If a co-owner has neither any heirs nor a legal successor, his/her share passes to other co-owners in a ratio that is adequate to their shares in case of his/her death (termination).

3.3 Rights and Obligations of Inventors

Rights and obligations of inventors represent the content of the patent law. The rights to inventions can be divided into three groups: rights of personal, mixed and property nature.

The personal rights include the right to origin, right to inviolability of the invention and the right to decide on its publication or confidentiality. The personal rights are limited in time and non-transferable, they even do not pass to other subjects by inheritance. Therefore, they can be acquired only by a natural person and his/her creation of an invention.

The mixed rights may belong to the creator of the invention or to a third person, who is authorized either by the law (such as in the case of the industrial invention) or to file the application based on an agreement on the transfer of the rights to the invention. At the same time, the person is also entitled the right of priority and the right to grant of protection by the submission of an application if the criteria defined by law for the grant of the patent and procedural acts related to the registration of the invention are fulfilled.

The property rights to inventions include the right of the originator, of the owner of the patent to use the invention himself/herself or to give consent to use the invention to a third person, to transfer the patent for the invention to another person, or to establish a lien to the patent for the invention, and, finally, to demand protection for their rights to the invention. The property rights to the invention are transferable, can stand for a subject matter of ensuring of commitments, or a subject matter of inheritance and a subject matter of execution.

Obligations of the patent owner consist mainly of the obli-

gation to pay maintenance fees from the third year after the establishment of legal protection within the meaning of Act No. 495/2008 Coll. on maintenance fee for a patent, and in particular if a consent is given by the patent owner to a third person, or to more than one third person to use it based on the license agreement. On the basis of a written application, the owner of the patent is obliged to address the Industrial Property Office of the SR to ensure the registration of the license, lien, transfer or passing of the patent or litigation to the register.

3.4 Establishment and Termination of Patent Protection

Unlike copyright, the rights to the inventions are established formally, i.e. by means of registration in a relevant register managed by an administrative authority. In the case of national legal protection, the authority is represented by the central state administration authority – Industrial Property Office of the SR having its registered office in Banská Bystrica. In spite of that, every right is not established only by the moment of the registration of the invention. For example, the right to origin is established by the very creation of the given intangible asset, but the origin to the invention is confirmed only by a legal decision on protection granting by an administrative authority.

Significant legal consequences in connection with the establishment of the rights to inventions are related to the filing of the patent application as well. The filing of the patent application results in the establishment of the right of priority. The right ensures the priority of the person who files the application as the first one vis-à-vis to the person filing the application of the same intangible asset later. The second important fact, which arises at the moment of filing the application, is the beginning of the protection period if the object of the filed application is granted legal protection.

The filing of the application for the registration of an invention in one of the member states of the Paris Convention results in the preservation of the applicant's priority right obtained by the application in other Convention member states. The applicant can apply the obtained priority right in other member states by registering his/her invention within 12 months from filing of the first patent application.

The granting of the patent for an invention results in the establishment of a temporary monopoly right of the owner of the patent for the invention. Within the meaning of the prov. § 15 par. 1 of Patent Act, without the consent of the owner, no one is allowed to:

- produce, use, make use of, offer or place on the market, or store or to import a product, which is a subject matter of the patent for that purpose,
- use a production practice, which is a subject matter of the patent, or to offer such a protected method for the use to another person,
- produce, use or offer or place on the market, or to store or import a product directly obtained by a protected way for that purpose,

- supply or offer for a supply to a person that is not authorized to use the invention or the means used to carry out the invention, if the infringer knows or should know with regard to given circumstances that the means are intended or appropriate for carrying out the invention; it does not apply if the means are available on the market and the supplier had not incited the unauthorized person to act contrary to the abovementioned.

The patent protection terminates:

- with the patent expiration. Any patent is valid for a maximum of 20 years from the date of filing of the application. This period cannot be extended (a certain exception is represented by supplementary protection certificates).
- with passing of the period set for the payment of an administrative fee for the maintenance of patent validity.
- from the date of effectivity of surrender of the patent. The patent owner may surrender the patent by means of a written notice delivered to the IPO SR. If he/she is a co-owner, his/her share passes to the other co-owners. The surrender of the patent comes into force on the date of delivery of the notification by the patent owner to the Industrial Property Office of the SR.

After the expiry of the patent period, the invention becomes free and can be used by anyone without the need of prior consent to its use and without the obligation to pay remuneration or compensation of remuneration. However, nobody can usurp the origin to a free invention.

3.5 Supplementary Protection Certificates

A supplementary protection certificate does not act as a separate subject matter of the intellectual property, but it protects the inventions after the expiry of the patent protection periods. The patent protection lasts for a maximum of 20 years and it cannot be extended. The period starts from the date of filing the application and not the moment of the grant of patent protection. Therefore, in the case of certain inventions, it can happen that the protection period granted by the patent law is disproportionately short compared to the period of return on investment and bureaucratic process, which the invention has to go through, until it is granted the patent protection and authorization to place the product containing the invention on the market. It applies in particular to human and veterinary medicinal and plant protection products, which cannot be placed on the market without statutory authorization. This authorization can be requested only after the filing of the patent application, i.e. after the protection period begins, otherwise the protected medicines or medicinal product does not fulfill the novelty criterion. The granting of the authorization to place the medicinal and plant protection products on the market takes certain amount of time due to various observations and testing processes, which precede it in order to ensure the protection and safety of the health of humans, animals, plants and the environment. After getting through these administrative procedures, the patent protec-

tion period remaining may be far from corresponding to the period necessary for the return on investment. Therefore, in this case, it is possible to apply for an additional protection period for such inventions, however, no longer in the form of patent protection but of the so-called supplementary protection certificate, which immediately follows the patent protection.

The legal regulation of the supplementary protection certificates can currently be found in the European Union regulations, which take precedence over the national legislation, and it is not possible to take it over by the national legislation by any means. Therefore, the Slovak legislation legally abolished the legal regulation of the supplementary protection certificates in Patent Act. The European Union regulations, which are equally and directly applicable and effective on the territory of all member states, will ensure a single legal regulation of the given intangible assets within the whole EU.

The legal regulation of the supplementary protection certificates is currently governed by the Regulation of the European Parliament and of the Council No. 469/2009 concerning supplementary protection certificate for medicinal products, and by the Regulation of the European Parliament and of the Council No. 1610/96 concerning creation of supplementary protection certificate for plant protection products.

The supplementary protection certificate is a public document issued by the Industrial Property Office of the SR for medicinal products and plant protection products, which can be placed on the market only based on an authorization issued by competent authorities. Supplementary protection certificates may be issued only to the owner of the patent or his/her legal successor. The owner of the supplementary protection certificate has the same rights and obligations as the owner of the patent.

3.5.1 Supplementary Protection Certificate for Medicinal Products

Pursuant to the Regulation of the European Parliament and of the Council No. 469/2009 concerning the supplementary protection certificate for medicinal products, a medicinal product is any substance or a combination of substances presented as having treating or preventive properties in relation to human or animal diseases, and any substance or a combination of substances that may be administered to human beings or animals with a view to making a medical diagnosis or restoring, correcting or modifying physiological functions in human beings or in animals.

The conditions that must be fulfilled by such products as medicines in order to obtain the supplementary protection certificate, are:

- the product is protected by a valid patent (application for the supplementary certificate must be filed within the period of six months from obtaining the authorization to place the product on the market; if the authorization is obtained prior to the grant of the patent, the application for the certificate must be filed within the period of six months from the date of the grant of the patent),
- the product has obtained a valid authorization to place the medicinal product on the market (i.e. as a human or

veterinary medicine),

- no supplementary protection certificate has yet been issued for the product,
- valid authorization to place it on the market as a medicinal product is the first such authorization.

The certificate comes into force after the expiry of the statutory period of the patent validity and it lasts for a period equal to the period which elapses between the date of filing of the patent application and the date of the first authorization to place the product on the market, reduced by a period of five years. The maximum protection period, however, cannot exceed the five-year period beginning on the date of the certificate coming into force. The validity period of the supplementary protection certificate for medicinal products for paediatric use may be extended by six months, but only once.

3.5.2 Supplementary Protection Certificate for Plant Protection Products

According to the Regulation of the European Parliament and of the Council No. 1610/96 concerning creation of supplementary protection certificate for plant protection, plant protection products are active substances and preparations containing one or more active substances in the form, in which they are supplied to the user, intended to:

- protect plants or plant products against all harmful organisms or their action, unless otherwise provided by this Regulation,
- influence the life processes of plants, other than as a nutrient (e.g. plant growth regulators),
- preserve plant products, if such substances and products are not subject to special Council or Commission provisions on preservatives,
- destroy undesired plants,
- destroy parts of plants, check or prevent undesired growth of plants.

The conditions that must be fulfilled by such products as plant protection preparations in order to obtain the supplementary protection certificate, are:

- the product is protected by a valid patent (application for the supplementary protection certificate must be filed within the period of six months from obtaining the authorization to place it on the market; if the authorization is obtained prior to the grant of the patent, the application for the certificate must be filed within the period of six months from the date of the grant of the patent),
- valid authorization to place the product on the market as a plant protection product has been issued,
- no certificate has yet been issued for the product,
- the authorization to place the product on the market is the first authorization to place the product on the market as a plant protection preparation.

The certificate comes into force after the expiry of the statutory period of the patent validity and it lasts for a period equal to the period which elapses between the date of filing

of the patent application and the date of the first authorization to place the product on the market, reduced by a period of five years. The maximum protection period, however, cannot exceed the five-year period beginning on the date of the certificate coming into force.

4 European Patent Protection

In terms of the area of the EU patent law, there had long been only regulations on supplementary protection certificates for medicinal products and plant protection products, and a directive regulating harmonization of the patentability of biotechnological inventions, which has been transposed into the national legislation of individual member states; in the case of Slovakia it has been transposed into Patent Act.

However, the creation of the so-called Community Patent and introduction of patent judicial system had long been discussed at the EU level as well. The result of these discussions resulted in the adoption of:

- the Regulation of the European Parliament and of the Council (EU) No. 1257/2012 of 17 December 2012 implementing enhanced cooperation in the area of creation of unitary patent protection,
- Council Regulation (EU) No. 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of creation of unitary patent protection with regard to the applicable translation arrangements,
- Agreement on a Unified Patent Court (2013/C175/01),

Already in 2000, the Commission adopted a proposal for a Council Regulation on the Community patent for the creation of a unitary patent, which would ensure a uniform patent protection within the whole EU, and, in 2010, the Commission adopted a proposal for a Council Regulation on translation arrangements for the European Union patents laying down the translation arrangements applicable to the European Union patents. The 2010 session of the Council demonstrated that there is no unanimity of the member states in terms of the translation arrangements. It was not possible to adopt the proposal for the Regulation on the translation arrangements, because this agreement was necessary for the final agreement on the unitary patent protection in the EU. Therefore, a group of member states decided to address the new situation by means of an enhanced cooperation. In its Decision No. 2011/167/EU of 10 March 2011, the Council permitted 25 EU member states the enhanced cooperation for the purposes of creating a unitary patent protection. Spain and Italy did not participate in the cooperation and they refused to accept the proposed translation arrangements using only three languages (English, German and French). In 2012, Regulation of the European Parliament and of the Council (EU) No. 1257/2012 of 17 December 2012 implementing enhanced cooperation in the area of creation of unitary patent protection and Regulation of the Council (EU) No. 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of creation of unitary patent protection with regard to the applicable translation arrangements were adopted. The main objective of the Regulation No. 1257/2012 is to create a European patent with unitary ef-

fect for the territory of all of the EU member states participating in this cooperation. In compliance with the preamble of the Regulation, the main feature of the European patent with unitary effect should be its unitary character, i.e. it should ensure uniform protection and have the same effect in all participating member states and, at the same time, the European patent with unitary effect is fully treated as a national patent of a given participating member state in every participating member state. The Regulation does not exclude the right of the member states to grant national patents, and hence, patent applicants have the opportunity to choose between a national patent, European patent with unitary effect, European patent with effect in one of the contracting states or in several contracting states of the European Patent Convention. However, after the entry into force of the uniform patent protection, the member states participating in enhanced cooperation should ensure that the granted European patent does not take effect as a national patent in their territory in order to avoid any duplication of patent protection.

In 2013, the member states participating in the enhanced cooperation concluded an international agreement on a unified patent court. The international agreement was also signed by Italy and the member states of Poland and Spain did not sign it. At present, the agreement has to be ratified by at least 13 signatory states in order for the agreement along with the abovementioned regulations to be allowed to be applied in practice. The European Patent Court has the right to make decisions in disputes concerning the European patents and the European patents with unitary effect. The European Patent Court consists of the Court of First Instance, Court of Appeal and the Office. The Court of First Instance consists of a Central Division and local and regional divisions. The Central Division has its headquarters in Paris and its two sections are in London and Munich. A local division is established in a contracting state upon its request. A regional division is set up for two or more of contracting states upon their request. The Court of Appeal has its registered office in Luxembourg. At the same time, the international agreement resulted in setting up the Patent Mediation and Arbitration Centre. The Centre has two seats situated in Ljubljana and Lisbon.

5 International Patent Protection

The protection of the intellectual property rights is limited territorially, i.e. it is exercised only in the territory of the state that has granted it to the owner of the intangible asset. If the owner of a patent, which is registered in Slovakia, is thus interested in the patent protection beyond the state borders, he/she must apply for it either through national authorities of the given country or through international institutions providing legal protection for the inventions based on international treaties.

In general, applicants for the patent protection generally go through the process involving national authorities for the registration of the intellectual property rights only if the country in which they want to register their inventions is not a contracting party of any international agreement, on the

basis of which the patent protection is granted by the state. It is due to the procedure being time-consuming and expensive and other transaction costs (such as cost of document translation, cost of patent attorneys, the cost of the administrative fees in every country) need to be assumed as well.

Most of the applicants for the patent protection abroad use the method of the international registrations. Applicants from the member states of the European Patent Convention (Communication of the Ministry of Foreign Affairs of the Slovak Republic No. 47/2008 Coll.) can obtain patent protection in all contracting states of the Convention on the basis of one application. At present, the Convention has been ratified by 38 states, however, on the basis of the application; the effect of the European patent is also recognized by Bosnia and Herzegovina and Montenegro. Slovakia has been a contracting country of the Convention since 1.7.2002. Based on the Convention, the European Patent Organization was established. It has two bodies: the European Patent Office seated in Munich and the Administrative Council supervising activities of the Office.

Applications are delivered either through the IPO SR or directly to the European Patent Office in one of its official languages, i.e. in English, German, French or any other world language, but it is necessary to ensure the translation of the applications into the official language of EPO within 3 months from their filing. The European patent application procedure is charged. It is necessary to pay a so-called filing fee, research fee, fee for every contracting state in which the protection is requested, therefore, the application must specify the states in which the protection is required, and others (see the current Rules relating to Fees of the Convention on the Grant of European patents, which usually changes every year). Like the IPO SR in Slovakia, the European Patent Office carries out a two-stage examination as well. A decision on the grant of a European patent is made only based on a factual examination. The decision is published in the European Patent Bulletin. It is possible to lodge an objection against the decision within 9 months from the publication.

The patent protection can be applied for through the International Bureau of the World Intellectual Property Organization (WIPO based in Geneva) as well and it is done on the basis of the international Treaty on Patent Cooperation (Patent Cooperation Treaty PCT). The filing of an international application enables the applicants to obtain the patent protection in up to 148 countries acting as contracting parties of the Patent Cooperation Treaty. The international application can be filed either through national authorities (in the case of Slovakia it is the IPO SR) or directly to the International Bureau of WIPO in Geneva.

The international patent application procedure starts with the filing of the international application and payment of the administrative fee. The application is filed in English, French or German language. If it is filed in a different language, it is necessary to ensure its translation into one of the mentioned languages within one month from its filing.

The second step on the way of obtaining the international patent protection is an international search, which is usually carried out by the International Searching Authority. It also prepares an opinion on the patentability of the given

invention. Its objective is to find out whether there are any documents or publications, which could have a negative impact on the patentability of the invention being registered, published.

On the basis of the results of the search, the applicant can decide in which country he/she will apply for the grant of his/her patent, or whether he/she will apply for it or will take his/her application back. If the applicant decides to continue in the procedure and not to take the application back, the publication of the application follows.

The next part is only optional, i.e. it is carried out only in the case of the applicant requesting it. The examination is of a preliminary nature and its result is a report on patentability that provides more detailed information about the likelihood of obtaining of the patent protection in the selected countries. The objective of the preliminary examination is to provide a preliminary opinion regarding the question of whether the invention appears to be new, whether it involves an inventive activity and whether it is industrially usable. The report on the preliminary examination is sent to all selected offices, which the applicant specifies in his/her application.

The last step in the process of the international registration of patents is called national phase of the procedure. This phase is carried out in accordance with the requirements of either national or regional legislation. The PCT treaty does not allow any administrative procedure to take place, for instance before the International Bureau of WIPO, and end in the grant of the international patent protection in all selected countries of the Patent Convention. In any case, it is, however, a great help for the applicant when the search and, in the case of interest, even the factual examination is carried out by a single authority, while the subsequent national phase has only a formal character.

IV. Conclusion

The intellectual property law is governed not only by various legal regulations of national nature, but also by various sources of international public law and, last but not least, by the European Union law as well. The intellectual property represents a potential source of economic, social and cultural development of the society; therefore, it cannot be ignored even in the context of the deepening integration on the European continent.

The constantly increasing pace of the scientific and technological development extends the range of the intangible assets that are provided the legal protection by the intellectual property law. This fact was assumed already by the Paris Convention for the Protection of Industrial Property adopted in 1883. The article 1 par. 2 defines the objects of the industrial property protection only through the demonstrative enumeration. These are patents for inventions, utility models, industrial designs or models, factory or trademarks, service marks, trade names and data on the provenance of goods or designations of origin. At the time of the Paris Convention, the intangible assets, such as new plant varieties, topographies of semiconductor products, or traditional specialities guaranteed, which are a part of the industrial rights today, did not exist yet.

It is necessary to protect the results of one's own intellectual creative activities against unauthorized intervention and, in addition to that, it is also necessary to be aware of at least the basic boundaries of rights and obligations, which are provided by national, international and European Union legislation.

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