

CIVIL LAW PROTECTION OF INTELLECTUAL PROPERTY IN RESEARCH INSTITUTES SUPERVISED BY THE MINISTER OF NATIONAL DEFENSE

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Abstract: The military sector represented and controlled by the Ministry of National Defense is an extremely important sector in the activities of the state. In this article, the author reviews the legal protection of the effects of innovative activities that ensure the implementation of defense tasks by institutes supervised by the Ministry of National Defense.

Keywords: protection of intellectual property, protection of industrial property, research institutes supervised by the Minister of National Defense.

CYWILNOPRAWNA OCHRONA WŁASNOŚCI INTELEKTUALNEJ W INSTYTUTACH BADAWCZYCH NADZOROWANYCH PRZEZ MINISTRA OBRONY NARODOWEJ

Streszczenie: Niezwykle ważnym sektorem w działalności państwa jest sektor militarny reprezentowany i kontrolowany jest przez Ministerstwo Obrony Narodowej. W niniejszym artykule autorki dokonują przeglądu ochrony prawnej efektów działalności innowacyjnej zapewniającej realizację zadań obronnych przez instytuty nadzorowane przez MON.

Słowa kluczowe: ochrona własności intelektualnej, ochrona własności przemysłowej, instytuty badawcze nadzorowane przez Ministra Obrony Narodowej.

1. Introduction

In the era of pressure on the commercialization of the results of creative research and solutions in enterprises, the necessity and importance of securing property rights to objects being the result of a creative activity is growing. These activities are entering or rather originate from the area of intellectual property. Unfortunately, not every human being and not every entrepreneur is aware of the importance of protecting their products.

Intellectual property includes various aspects of creative human activity, both copyrights and rights to subjects in the field of industrial property rights, such as inventions, utility models, industrial designs or trademarks. The growing competitiveness of enterprises as well as the ease of economic theft means that only entrepreneurs who base their activities on legally protected rights to their intellectual property can gain an advantage in the environment. That is why it is so important to build awareness about the possibilities of protecting intellectual property rights. Combining knowledge in this field with effective management may allow effective implementation of new business solutions and reaping the benefits of their operation.

An especially sensitive area of economic activity is the economy department related to, among others with the production of the military assortment. It also includes specialist branches, such as military aircraft, car and shipyards as well as components and electronic equipment for the needs of the army. They are also all those entities that implement defense policy in the field of innovative activity aimed at ensuring the implementation of tasks indicated in the government administration department of national defense. Tasks in the area of innovativeness in the Ministry of Defense concern the development of new technology and the establishment of new or significantly improved goods, processes or services on its basis.

The article adopted a qualitative research strategy. The subject of the research undertaken in this article are research institutes supervised by the Minister of National Defense. The main object of this article is to review the legal protection of the effects of innovative activities ensuring the implementation of defense tasks by institutes supervised by the Ministry of National Defense. The research problem, in turn, was to answer the question, which type of civil law protection from the area of industrial property protection is most often used by institutes (DzU z 2017 r. poz. 1158) supervised by the Ministry of National Defense.

In their deliberations, the authors focused only on research institutes, within the meaning of the Act of 30 April 2010 on research institutes supervised by the Ministry of National Defense and carrying out defense tasks. Research institutes are state entities distinguished in legal, organizational and economic-financial terms. They conduct research and development work aimed at their implementation and practical application. The area of interest also included selected Polish scientific and research institutes, which received this status at the request of the minister supervising the given institution, in this case the Minister of National Defense.

As a result of the research, it was indicated which research institutes were supervised by the Ministry of National Product, which apply civil protection to their products.

2. Legal status of entities supervised by the Minister of National Defense

Status of state legal persons pursuant to art. K.C. they usually define legal provisions regulating the sphere of social relations in which they are supposed to act. In connection with the potential impact of state legal persons on the rights and obligations of the citizen, the provisions regulating the status of legal persons are contained in legal acts at least at the level of the act. As a result of the accession of the Republic of Poland to the European Union, the regulations governing the establishment, system and cessation of legal persons may also be included in the regulations of the European Parliament and the Council as acts having priority over acts pursuant to art. 91 par. 3 of the Constitution of the Republic of Poland (DzU Nr 78, poz. 483 ze zm.). The provisions calling legal state legal persons are, among others: art. 12 of the Act of 27 July 2005 Law on Higher Education (consolidated text: Journal of Laws of 2017, item 2183, as amended), art. 1 point 2 of the Act of 30 April 2010 on research institutes (consolidated text: Journal of Laws of 2017, item 1158 as amended) or art. 1 of the Act of 25 September 1981 on state-owned enterprises (consolidated text: Journal of Laws of 2017, item 2152).

A state legal entity in civil law transactions acts on its own behalf and on its own account through its organs in the manner provided for in the Act and in the statute based on it. It should be noted that this independence of state legal entities is connected with the lack of responsibility for the obligations of the State Treasury pursuant to art. 40, § 1 k.c. Created by the State Treasury, and more specifically by the relevant State Treasury, State legal persons can independently contract and acquire rights on their own behalf and for their own account. The above regulation results in the fact that state legal persons can only be supervised by, for example, the founding body constituting the State Treasury statutes, for example the State Treasury – the Minister of National Defense. Tasks defined in the government administration department of national defense are performed by state legal persons supervised by the Minister of National Defense, i.e. universities, research institutes, state-owned enterprises.

In the area of the department, national defense include matters of the Armed Forces of the Republic of Poland and defense of the State. These matters are of course implemented in many aspects, forms and various methods. Due to the subject of this article, whose authors focused on the legal protection of the effects of innovative activities aimed at ensuring the implementation of the tasks indicated in the department of government administration, national defense. The innovative activity is in accordance with art. 2 para. 1 point 3 of the Act of 30 May 2008 on Certain Forms of Support for Innovative Activities (ie Journal of Laws of

2018, item 141), the activity consisting in the development of new technology and launching on the basis of it the production of new or significantly improved goods, processes or services. This definition refers to the existing division of innovations into product, process and organizational innovations (Dzikowski, 2014). In this article, the subject of consideration is the legal protection of the effects of innovative activities of entities carrying out tasks in the field of *national defense*, regardless of the type of innovation. Innovative activity therefore consists in the development and implementation of intellectual goods that make up the entrepreneur's intellectual property.

As mentioned in the introduction, bearing in mind the diversity of entities that can conduct innovative activity as demonstrated in the present article, the subject of research has been narrowed down to research institutes supervised by the minister competent for national defense matters. The limitation to research institutes will allow to outline the paths of formal and informal legal protection that are available to entrepreneurs who are state legal persons. Such limitation is justified in order to show the catalog of legal protection measures, since such protection enjoyed by entrepreneurs is in fact wider than the protection of intellectual property that may be used, for example, by universities. Due to the foreseen in art. 2 para. 1 of the Act of 30 April 2010 on research institutes, the scope of tasks included in the basic activity of research institutes is purposeful to show the use of formal protection of intellectual property by such entities.

Research institutes are state legal entities whose main tasks are: conducting scientific research and development works, adapting the results of scientific research and development works to the needs of practice and implementing the results of scientific research and development works (DzU z 2017 r. poz. 1158 ze zm.). They are, therefore, independent entities in civil law transactions, conducting innovative activity on their own behalf and on their own behalf. According to art. 36 points 10 of the Act of 20 August 1997 on the National Court Register (consolidated text: Journal of Laws of 2017, item 700, as amended), research institutes are subject to entry in the Register of Entrepreneurs of the National Court Register. Therefore, they have the status of an entrepreneur, although it should be noted that in the Act of 20 August 1997 on the National Court Register, entry into the register depends on the organizational and legal form of the entity, and not on running business. Definition of the entrepreneur contained in art. 43 (1) of the k.c. provides that the entrepreneur is a natural person, a legal person and an organizational unit referred to in art. 33 (1), § 1, conducting business or professional activity on its own behalf. The business activity is the commercial activity of construction, construction, trade and service as well as exploration, identification and extraction of minerals from deposits, as well as professional activities, carried out in an organized and continuous manner (DzU z 2017 r. poz. 2168 ze zm.). According to art. 2 of the Act of 30 April 2010 on research institutes, these entities may conduct business activity, but they do not have to. Therefore, a factual situation is possible, in which the research institute has the status of an entrepreneur within the meaning of art. 36 of the Act of 20 August 1997 on the National Court Register, but

at the same time does not fulfill the definition of the entrepreneur referred to in art. 43 (1) of the penal code, because he did not undertake any economic activity.

According to the attachment to the announcement of the Minister of National Defense of August 24, 2016 on the list of organizational units subordinate to or supervised by the Minister of National Defense to research institutes supervised by the Minister of National Defense: Technical Institute of Air Forces in Warsaw, Military Institute of Chemistry and Radiometry in Warsaw, Wojskowy Instytut Łączności im. prof. dr. hab. Janusz Groszkowski in Zegrze, Wojskowy Instytut Techniki Panczernej i Samochodowej w Sulejówku, Military Institute of Armament Technology in Zielonka, Military Institute of Engineering Techniques prof. Józef Kosacki in Wrocław, the Military Institute of Hygiene and Epidemiology in Warsaw, the Military Institute of Aviation Medicine in Warsaw and the Military Medical Institute in Warsaw. These state legal persons conduct scientific research and development works serving the Armed Forces of the Republic of Poland, defending the State or participating in military undertakings of international organizations and fulfilling military obligations resulting from international agreements. They are entities that create intellectual property.

3. Industrial property in research institutes supervised by the Ministry of National Defense

The legal protection of intellectual property consists of informal and formal protection. As the informal protection of intellectual property, the author defines legal means provided for in the system of intangible goods protection, ie personal rights, the right to combat unfair competition, copyright and related rights, and protection of databases. Informal protection measures are also those resulting from art. 222 k.c. measures to protect the property right of a corpus mechanicum (carrier) of intellectual property. The formal legal protection of innovative activities should include measures provided for in industrial property law and legal protection of plant varieties.

The formal legal protection of innovative activities should include measures provided for in industrial property law and legal protection of plant varieties. Due to the scope of cases specified in the department of government administration, national defense, the considerations concerning the legal protection of plant varieties will be omitted in this article. Formal protection of intellectual property requires meeting a number of formal requirements, for example in the scope of the obligation to use official forms, payment of fees. It involves the necessity to wait for the completion of proceedings before the Patent Office of the Republic of Poland and the obligation to monitor possible breaches of protection and registration rights, with the exception of patent rights. It is also necessary to use the services of a professional representative: patent attorney, attorney or legal counsel. The great advantage of formal

protection of intellectual property is easier pursuit of claims for infringement of industrial property rights, for example in the area of the fault of the entity infringing these rights. Information on the subject of industrial property and the entity entitled to it is, moreover, disseminated in official publications of the Patent Office, i.e. in the Bulletin of the Patent Office and News of the Patent Office.

The Act of 30 June 2000. Industrial property law (ie, Journal of Laws of 2017, item 776) provides for formal protection of the following intellectual goods: inventions, utility models, industrial designs, trademarks, geographical indications and topographies of integrated circuits. In the activity of research institutes supervised by the Minister of National Defense, the probability of reaching formal protection of intellectual property against geographical indications and topography of integrated circuits is smaller than other industrial property items, therefore the subject of these considerations will be legal protection measures in relation to inventions, utility models, industrial designs and trademarks.

Before the provisions of the law of industrial property law provided for in the Act of 30 June 2000 will be discussed, it is worth mentioning the essence of protected objects. The invention is a solution of a technical nature, and the utility model is a new and useful solution of a technical nature, regarding the shape, construction or combination of an object with a permanent form. The industrial design is a new and individual character of the product or its part, attributed to it in particular by the features of lines, contours, shapes, colors, texture or material of the product and by its ornamentation. A trademark is any sign that can be represented graphically if the sign is suitable for distinguishing goods of one company from another company's goods, in particular word, drawing, ornament, color composition, spatial form, including the form of the good or packaging, and also a melody or other sound signal. In relation to the invention, he is entitled to the exclusive use of the invention in a profitable or professional manner throughout the Republic of Poland, known as a patent, utility model and trademark protection law allowing for exclusive use in a profitable or professional manner in Poland, and in relation to industrial designs right from registration (DzU z 2017 r. poz. 776). Research institutes supervised by the Minister of National Defense, which, using formal legal protection under industrial property law, may apply to the competent District Court with claims illustrated in Fig. 1.

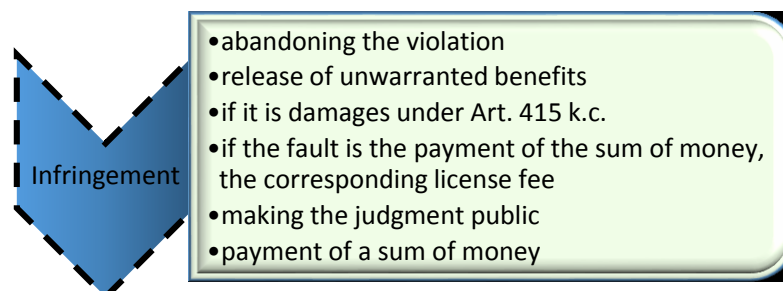


Figure 1. Legal protection measures in case of violation of industrial property rights. From own study based on art. 287, art. 292 and art. 296 para. 1 and 1a of the Act of 30 June 2000. Industrial property law.

Research institutes supervised by the Minister of National Defense, being state legal persons, manage intellectual property rights as part of their basic activities and conduct innovative activities. Due to the fact that intangible assets are assets of research institutes, the authors have analyzed the use of formal protection of inventions, utility models, industrial designs and trademarks by means of commonly available data contained in the Internet browsers of the Patent Office of the Republic of Poland Register Plus. The data sets provided by the Patent Office of the Republic of Poland from 2012 include information about filings made, granting or refusing to grant protection, discontinuing proceedings and the status of an exclusive right (in force, expiration). Due to the combination of data on inventions and utility models in the Register Plus search engine, the table below presents the combined data on both industrial property rights. The table presents numerical data obtained with the help of Register Plus, a search engine for inventions and utility models, a search engine for industrial designs and a search engine for trademarks valid as at 11 February 2018.

Table 1.

List of the use of formal legal protection of intellectual property by research institutes supervised by the Minister of National Defense

Lp.	Name of the institute	Number of entries in the scope of protection:		
		inventions and utility models	industrial design	trade mark
1.	Air Force Institute of Technology in Warsaw	143	1	8
2.	Military Institute of Chemistry and Radiometry in Warsaw	35	1	0
3.	Military Communication Institute im. prof. dr hab. Janusza Groszkowskiego in Zegrze	29	0	0
4.	Military Institute of Armored and Automotive Technology in w Sulejówce	8	2	1
5.	Military Institute of Armament Technology in Zielonka	159	0	26
6.	Military Institute of Technical Engineering prof. Józefa Kosackiego in Wrocław	115	1	0
7.	Military Institute of Hygiene and Epidemiology in Warszawa	15	0	0
8.	Military Institute of Aviation Medicine in Warszawa	19	0	0
9.	Military Institute of Medicine in Warszawa	2	0	0
In all:		525	5	35

Note: own study based on data Register Plus, <http://regserv.uprp.pl/register/regviewer>, <http://regservds.uprp.pl/register/regviewer>, <http://regservtd.uprp.pl/register/regviewer>, 11.02.2018.

The above table clearly shows that research institutes supervised by the Minister of National Defense most often use formal protection of intellectual property in the form of a patent for invention and protection right for a utility model. It may result from the specified in art. 2 para. 1 of the Act of 30 April 2010 on research institutes of the scope of the basic activity of these state legal persons, i.e. conducting scientific research and development works, adapting the results of scientific research and development works to the needs of practice and implementing the results of scientific research and development works. Bearing in mind the civil law ease of implementing inventions protected by a patent through licensing agreements or the sale of

patent rights, reaching for this protection seems justified. A worrying phenomenon is the fact that more than half (66.67%) of research institutes supervised by the Minister of National Defense any entry in the field of trademark protection. This may indicate a lack of perception of the meaning or trademark or its formal protection against the Patent Office. It should be emphasized that research institutes supervised by the Minister of National Defense, being entrepreneurs or at least participating in professional trade, do not endeavor to build a brand of their own entity or products or services that result from their innovative activities. Does this result from the lack of awareness of the status of a participant in business transactions in the free market economy or from the fear of meeting formal requirements of proceedings before the Patent Office? Answers to these questions may be provided by surveys conducted in research institutes supervised by the Minister of National Defense, which go beyond the subject of this article.

4. Conclusion

As can be easily seen from the foregoing research institutes awareness on how to protect intellectual property objects, is inadequate. While objects that are the result of creative activities such as inventions, industrial designs or utility models find legal protection, a trademark that is a sign that gives the item the characteristics of individuality and uniqueness is already omitted in the application process at the Patent Office. In addition, the scope of the trademark is also not fully used by research institutes. As a result, there is no recognizability on the market of products resulting from the activities of these institutes, and in society the conviction is that we do not have our own defense solutions. Another important element, apart from the legal aspect, is the commercialization of these solutions. However, this is not the subject of this article.

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