

INTELLECTUAL PROPERTY RIGHTS IN POLAND

1. Scope of regulation
 2. Copyrights
 3. IP rights: types of protection
 4. Patent
 5. Utility model
 6. Industrial design
 7. Trademark
 8. The choice of protection tools
 9. Counteracting IP infringements
 10. Costs
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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 intellectual property rights also provides significant tax benefits:

- intellectual 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.

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.

1. Scope of regulation

Intellectual property in Poland is governed by two principle legal acts: the Copyright Act and the Industrial Property Act.

2. Copyrights

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. However, the rules of licensing, transfer of rights, the permitted scope of use of copyrights and many other related issues are strictly regulated.

Proprietary copyrights are vested in the creator, ensuring the exclusive right to use the work and dispose of it in all fields of use, and to remuneration for the use of the work.

Author's moral rights protect the creator's relationship with the work, unlimited in time and not subject to surrender or sale, in particular the right to:

- authorship of the piece,
- mark the work with your name or pseudonym or to make it available anonymously,
- inviolability of the content and form of the work and its reliable use,
- deciding on the first release of the work to the public,
- supervision over the use of the work.

3. IP rights: types of protection

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

- 1) patents granted in respect of inventions;
- 2) protection rights for utility models;
- 3) registration right for industrial designs;
- 4) protection right for trademarks;
- 5) registration right for geographical indications;
- 6) combating unfair competition

Out of the above methods of protection of IP rights, we will focus below on the presentation of the first four of them.

4. Patent

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. From this point of view, it is extremely important that the inventor does not disclose any details of the invention to third parties before submitting the application to the Patent Office, except where necessary for the description and filing of the invention, subject to the obligation of such persons to maintain confidentiality. In other words, it is important to limit access to information about the invention to the circle of the most trusted people and to prevent the presentation of details in publications, at conferences, or introduction of the invention to the market before filing an application for a patent.

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 from the date of filing the invention, although the duration of protection depends on the timely payment of periodic fees.

The equivalent of a Polish patent at the European level is the so-called European patent that may be granted by the European Patent Office based in Munich.

5. Utility model

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 contingent on the proper registration. The registration can be made for a maximum of 10 years from the date of filing the application, although the duration of protection depends on the timely payment of periodic fees.

6. Industrial design

Industrial design is a form of a product or of its part, which is new and has an individual character given to it especially by the characteristics of lines, contours, shapes, colours, product structure or material and by its ornamentation.

The protection of industrial designs generally starts upon the filing of the application and is conditional upon the successful registration, confirmed by the certificate of protection granted by the Patent Office. 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 within in 2-3 months from the date of filing the application.

The equivalent of the Polish industrial design at the European level is the so-called community design, which can be registered from Poland at the European Union Intellectual Property Office (EUIPO) in Alicante, Spain. The community design ensures protection in all countries of the European Union.

7. Trademark

The following items can constitute a trademark: a word, phrase, logo, sound, tune, design, image, a combination of words and graphical elements, colours, holograms, spatial forms, as well as any other indication which can distinguish goods and services of one entity from goods and services of another one.

Trademarks are generally protected from the time of application, however the ultimate protection is contingent on the successful registration. The protection lasts for 10 years from the date of filing and can be extended by successive 10 years periods, provided that the relevant fees are timely paid.

Polish patent attorneys, legal advisers and attorneys can register trademarks both in Poland and at the European Union Intellectual Property Office (EUIPO) in Alicante. In case of registration at EUIPO, the trademarks are protected in all countries of the European Union.

8. The choice of protection measures

Before the filing of an application to ensure any given rights it is recommended to analyze 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 optimum 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.

9. Counteracting IP infringements

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.

10. Costs

The costs of obtaining registration rights in the area of IP can be divided into fees to the relevant administrative bodies, cost of documents' translation (if necessary) and the attorney's 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, legal counsels and attorneys at law, 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 EUIPO in Alicante (regarding community designs and community trademarks). In case of the need to register IP rights in a foreign jurisdiction (otherwise than through EUIPO), the patent attorneys from that particular jurisdiction must be involved.

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If you intend to register any IP rights or seek advice regarding IP, including copyrights, you are welcome to contact:

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Last update: September 2022